



**A MANUAL**  
**FOR THE**  
**GUIDANCE OF OFFICERS**  
**IN THE**  
**PARTITION OF ESTATES**  
**UNDER**  
**ACT V (B.C.) OF 1897**

*PUBLISHED UNDER THE AUTHORITY OF THE  
BOARD OF REVENUE, BENGAL.*



**CALCUTTA :**  
**THE BENGAL SECRETARIAT BOOK DEPOT.**  
**1919.**

*[Price—Indian, Rs. 1.10 , English, 2s. 8d.]*









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## PREFACE.

A revision of the Batwara Manual, 1902, has become necessary, as  
*Member :* many of the  
THE HON'BLE MR. C. J. STEVENSON-MOORE, C.V.O., I.C.S. instructions con-  
tained therein are now obsolete. Different rulings  
have been passed in the Western and Eastern  
districts, which it is now necessary to co-ordinate, and  
to bring into their proper places in the Manual.

2. The Board is conscious of the fact that the provisions of the present Act (V of 1897) are not altogether satisfactory, and that its administration in the circumstances gives rise to doubts and difficulties. The amendment of the Act must however require considerable time and discussion, and this edition of the Manual is intended mainly to simplify and systematise the instructions under the present Act.

3. Rulings of the High Courts and of the Board of Revenue have been grouped together in a new Part of the Manual for ease of reference.

4. All Circular Orders up to April 1919 have been included in this Manual.

5. This Manual which supersedes that of 1902 should be referred to as the "Bengal Batwara Manual, 1919".

6. All errors and omissions should be brought to the notice of the Board.

F. D. ASCOLI,  
*Offg. Secretary.*

BOARD OF REVENUE, BENGAL,  
*The 25th September 1919.*



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**ACT No. V of 1897.**

**PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL  
IN COUNCIL.**

**(Received the assent of the Lieutenant-Governor on the  
11th September 1897, and of the Governor-General on  
the 23rd October, 1897).**

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[First published in the *Calcutta Gazette* of the 8th December, 1897.]

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**An Act to amend the law relating to the Partition of  
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## PART I

### Bengal Act No V of 1897.

An Act to amend the law relating to the Partition of Estates,

WHEREAS it is expedient to amend the law relating to the partition of estates;

And whereas the sanction of the Governor-General of India has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions contained in section 12 of this Act amending the Code of Civil Procedure;

It is hereby enacted as follows:—

#### CHAPTER I.

##### Preliminary.

1. (1) This Act may be called the Estates Partition Act, 1897; Short title, extent and commencement.

(2) It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal; and

(3) It shall come into force on the day † on which it is first published in the *Calcutta Gazette* after having received the assent of the Governor-General.

Ben. VIII of  
1876.

2. (1) On and from that day the Estates Partition Act, 1876, shall be repealed. But— Repeal and savings.

(a) this repeal shall not affect the previous operation of the said Act, or anything duly done or suffered thereunder, or any fine incurred thereunder;

(b) where in any pending case an order under section 63 of the said Act was made before the said day, the subsequent proceedings shall, unless all the proprietors request otherwise, be carried on under the said Act, as if this Act had not been passed;

(c) subject to clause (b) of this section, all pending proceedings which have been commenced under the said Estates Partition Act, 1876, before the said day, shall be carried on under this Act, save that, where in any case the Collector has before that day directed that an application for partition be admitted, section 11 of the said Estates Partition Act, 1876, shall apply instead of clauses (a) and (b) of section 11 of this Act.

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\* Now the Governor in Council of Fort William in Bengal.

† i.e. the 8th December 1897.

(2) Any enactment or document referring to the said Estates Partition Act, 1876, or to any enactment repealed thereby, shall, so far as may be, and subject to sub-section (1) of this section be construed to refer to this Act or to the corresponding portion thereof.

3. In this Act, unless there be something repugnant in the subject or context,—

**Definitions.**

- (i) “Board” means the Board of Revenue\* for the territories for the time being under the administration of the † Lieutenant-Governor ;
- (ii) “Collector” means the Collector of the district on the revenue-roll of which an estate which is under partition, or which it is proposed to bring under partition, is borne, and includes—
  - (a) any officer whom the Board generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his functions in respect of the partition of an estate, and
  - (b) any officer whom the Board specially vests (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act ;
- (iii) “Commissioner” means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate ;
- (iv) “Deputy Collector” includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition ;
- (v) “proprietor” includes every person who is in possession of any estate under partition or any portion of such an estate or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate ;
- (vi) “recorded proprietor” means a person whose name is registered on the Collector's General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein ;
- (vii) the words “tenure,” “permanent tenure,” “holding” and “tenant” have the meanings attached to them in the Bengal Tenancy Act, 1885 ;

\* As to the present constitution and powers of the Board of Revenue, see the Bengal Board of Revenue Act, 1913 (Act 2 of 1913).

† Now Governor in Council.

- (viii) "applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land revenue distinct from that for which the parent estate is liable ;
- (ix) "estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue ;
- (x) "joint undivided estate" means an estate of which two or more persons are proprietors ;
- (xi) "parent estate" means an estate for the partition of which proceedings are in progress under this Act, or of which the partition has been effected under this Act ;
- (xii) "separate estate" means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act ;
- (xiii) "land" does not include houses or other buildings standing thereon ;
- (xiv) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant and "rent payable in kind" means in money, the amount which would be determined as the rent if a commutation were made under section 40, sub-section (4), of the Bengal Tenancy Act, 1885 ;
- (xv) "assets," when used with reference to land, means—
  - (a) in the case of land held by cultivating raiyats—the rent payable by them ;
  - (b) in the case of land which is occupied by a proprietor—the rent which might reasonably be expected to be payable by cultivating raiyats if the land were occupied by them ;
  - (c) in the case of land held on a permanent tenure which was created by all the proprietors of the estate, and which by any law for the time being in force is protected against the purchaser at a sale for arrears of land-revenue—the rent payable by the holder of such tenure ;



- (d) in the case of land held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure subject only to the payment of an amount of rent fixed in perpetuity, and is of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the estate or any person deriving his title from such proprietors,—the rent payable by the holder of such tenure whether he be known as talukdar, patnidar, or mukarraridar, or by any other designation;
- (e) in the case of unoccupied land and land forming portion of a village site—such amount, if any, as the Deputy Collector may determine with reference to all the circumstances of the case, and includes—
- (f) all profits derived out of land by proprietors from trees, rights of pasturage, forest rights, fisheries and all other legal sources;

(xvi) “assets,” when used with reference to an estate means the assets of all land included in the estate;

(xvii) “Chapter” means a Chapter of this Act; and

(xviii) “section” means a section of this Act.

## CHAPTER II.

### Right to claim Partition.

Who entitled to claim partition.

4. (1) Subject to the provisions of this Act, every recorded proprietor of a joint undivided estate who is in actual possession of the interest in respect of which he is so recorded shall be entitled to claim a partition of the said estate and the separation therefrom and assignment to him as a separate estate of land representing the interest of which he is in such possession.

(2) Any two or more of such recorded proprietors may claim that land representing the interest of all such claimants be formed into one separate estate to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making any such claim.

(See Rulings 1—8 in Part IV.)

Partition according to interest.

5. (1) If the interest of any recorded proprietor who is entitled to claim partition is an undivided share in an estate held in common tenancy, he shall be entitled to have assigned to him as his separate estate land of which the assets shall bear the same proportion to the assets of

the parent estate as his undivided share in the parent estate bears to the entire parent estate.

(2) If the interest of such recorded proprietor is the proprietary right over specific mauzas or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said mauzas or lands.

(3) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific mauzas or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific mauzas or tracts, of which the assets shall bear the same proportion to the assets of such specific mauzas or tracts as his undivided share in such specific mauzas or tracts bears to the entire mauzas or tracts :

Provided that, if the interest of such recorded proprietor consists of such an undivided share in more than one mauza or tract, he shall not be entitled to have land assigned to him in every such mauza or tract, but the Collector may assign to him as his separate estate land situated in any one or more of the said mauzas or tracts, subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such mauzas or tracts.

(4) If the interest of such recorded proprietor consists partly of land held in severalty, and partly of an undivided share either in the whole estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to his share added to the land held by him in severalty, and the estate thus formed shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors.

(5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding subsections, land shall be assigned to him as far as possible in accordance with the principles therein laid down.

6. Whenever any land is held in common between the proprietors of two or more estates not being under partition, any one or more of such proprietors may, without applying for partition of their several estates *inter se*, apply for separation of the land held by them in common, and for the allotment of the proper shares of such land to each of their separate estates, the land revenue of those estates remaining unaltered ; and such application shall be dealt with as far as may be in accordance with the provisions of this Act.

Separation of land held in common between the proprietors of two or more estates, when the estates are not under partition.

(See Rules 9—12 in Part IV.)

Partition of lands under Act where a partition has been made by private arrangement.

**7.** (1) Where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate lands to be held in severalty as representing his interest in the estate, no partition of the estate shall be made under this Act except—

- (a) on the joint application of all the proprietors, or
- (b) in pursuance of a decree or order of a Civil Court.

(2) No objection to the partition of an estate under this Act on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under section 29 declaring the estate to be under partition.

(See Rulings 13—28 in Part IV).

Tenants for life not entitled to claim partition.

**8.** Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be entitled to claim partition under this Act.

(See Rulings 29—32 in Part IV).

### CHAPTER III.

#### Security of the land revenue.

Future partitions not to relieve land from liability for total land revenue unless made as provided in this Act.  
Amount of land revenue to be assessed on each separate estate.

**9.** No partition of an estate made after the commencement of this Act shall relieve any land from liability to the Government for the total demand of land revenue assessed upon the estate of which the land forms part, unless the partition is made as herein provided.

**10.** Except as otherwise provided in this Act, the amount of land revenue assessed on each separate estate shall bear the same proportion to the whole amount of land revenue for which the parent estate was liable as the assets of such separate estate bear to the whole assets of the parent estate.

Restrictions on partition of estate with reference to land revenue.

**11.** Subject to clauses (b) and (c) of section 2 of this Act, no partition of an estate shall be made and no application for the partition of an estate shall be admitted—

- (a) if the annual amount of land revenue for which the separate estate of the applicant would, after partition, be liable would not exceed ten rupees; or
- (b) if, after separation of the applicant's interest the annual amount of land revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five rupees; or

- (c) if the Collector considers that for any reason any of the separate estates would be likely to prove an insufficient security for the payment of the land revenue which would be separately charged upon it.

(See Rulings 33—35 in Part IV).

**12.** (1) Any Civil Court which has made a decree for the partition or for the separate possession of a share of an undivided estate paying land revenue to the Government may, notwithstanding anything in section 265 \* of the Code of Civil Procedure, cause the decree to be executed in the manner prescribed in section 396 † of that code; and if it does so, the joint and several liability of the entire estate for the whole of the land revenue chargeable upon it shall not be prejudiced or affected.

Execution of  
decree for  
partition.

(2) If any decree is sent to the Collector for execution under section 265 \* of the said code, the execution thereof shall be subject to the restrictions imposed by section 11 of this Act.

(See Rulings 36—39 in Part IV).

**13.** The Collector may refuse to admit an application for the formation of land held in severalty into a separate estate, or to proceed with a partition undertaken on such an application, or to admit or proceed with any other application for partition, if, in consequence of the land being intermingled with that held by other proprietors, the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land revenue :

Power to refuse  
partition which  
would result  
in formation  
of estates  
scattered so  
as to endanger  
the safety of the  
land revenue.

Provided as follows :—

- (a) a partition may be allowed in any such case if the recorded proprietors agree to such a distribution of land as would make the estates formed by the partition reasonably compact ;
- (b) nothing in this section shall be deemed to prohibit the partition into separate estates of any parent estate which before such partition is not compact and consists only of scattered parcels of land.

**14.** No proprietor who has alienated any portion of his interest in an estate, or in any specific land of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land revenue for which the estate is liable (such amount or share being other than the proportionate

Interest  
alienated  
with special  
condition as to  
liability for land  
revenue.

\* Now section 54, Act V of 1908.

† Now rules 13 and 14, Order XXVI, Schedule I, Act V of 1908.

amount or the proportionate share for which such transferred interest, if formed into a separate estate, would be liable under section 10),

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid, shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate;

and no such transferee as aforesaid, and no person deriving his title from such a transferee, shall be entitled to claim a separation of the interest which has been so acquired:

Provided that a separation of such interest may be made if the parties concerned agree—

- (a) to waive the conditions of the contract as regards the proportion of land revenue for which the transferor and transferee, or their representatives respectively are liable, and
- (b) to hold the estates which may be allotted to them, respectively, by the partition subject to the payment of such amount of land revenue as may be assessed upon them respectively under this Act.

(See Rulings 40—42 in Part IV).

**Sale, for arrears of land revenue, of an estate which is under partition.**

**15.** If any estate has been declared to be under partition, as provided in section 29, any arrears of land revenue accruing due thereon before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and, if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

**Sale, for arrears of land revenue, of share in an estate which is under partition.**

**16.** Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13, or section 14 of Act XI of 1859 (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), or any similar law for the time being in force, in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby:

Provided that, if any share in any estate is sold for its own arrears of land revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

## CHAPTER IV.

## Initiation and discontinuance of partition proceedings.

**17.** Every application for partition shall be made in writing to the Collector of the district on the revenue-roll of which the estate is borne, and shall be presented by the applicant or by his duly authorized agent.

Application for partition how to be made.

(See Rulings 43—46 in Part IV).

**18.** Every such application shall be signed by the applicant or by his duly authorized agent, and shall contain the following particulars, so far as they are known to, or can be ascertained by, him, namely:—

Application to be signed and to contain certain particulars.

- (a) the name of the parent estate;
- (b) the number under which such estate is borne on the revenue-roll, and the land revenue demand for which it is liable;
- (c) the number under which such estate is borne on the Collector's General Register of revenue-paying lands;
- (d) the name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post-office of the area within which each of the said proprietors resides;
- (e) the character and extent of the interest of which each proprietor of the parent estate is in possession;
- (f) a specification of any land held by proprietors of the parent estate in common with proprietors of other estates, and of the rights of such proprietors respectively in such land; and
- (g) such further particulars, if any, as may be prescribed by rules made by the Board.

**19.** (1) Every such application shall, subject to the provisions of sub-section (4) of this section, be accompanied by a copy of the rent-roll of the estate, and by a specification referring to the papers of every measurement and record-of-rights which has respectively been made of and prepared for the estate by any officer appointed in that behalf by the Government or other competent authority and of which the person verifying the application under sub-section (2) has knowledge.

Application to be accompanied by copy of rent-roll and by specification of previous measurements and record-of-rights.

(2) The said application, rent-roll and specification shall be verified at the foot of the application, by the applicant, or by his duly authorized agent having personal knowledge of the facts stated therein, in the manner following, or to the like effect:—

“I, A. B., declare that the particulars contained in this application and in the rent-roll and specification accompanying it are correct to the best of my knowledge and belief.”

(3) If the said application, rent-roll or specification, contains any entry which the person making the verification knows or believes to be false, or does not believe to be true such person shall be liable to be punished in the same manner as if he gave false evidence.

(4) If the person presenting the application is unable to produce a rent-roll as required by sub-section (1) of this section, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll; and the Collector may, if he thinks fit, require such person to produce such rent-roll.

**Procedure if application is not in order.**

**20.** If any such application does not in the opinion of the Collector fulfil the requirements of the foregoing sections of this Chapter, he may either reject it or return it for amendment

**Notification and notice of application.**

**21.** If in the opinion of the Collector the application fulfils the said requirements, and if there appears to him to be no objection to making the partition, he shall—

- (a) publish a notification of the application in the manner prescribed by section 104, and also by causing copies to be posted up at the Court of the Judge of the district and at the Court of every Munsif and Subdivisional Officer within whose jurisdiction, and at every police-station within the jurisdiction of which, any land appertaining to the estate is known to be situated;
- (b) by such notification invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection, either in person or by duly authorized agent, on or before a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate; and
- (c) serve a notice of the application on such of the recorded proprietors of the estate as have not joined in the application, on any unrecorded proprietor who has been named in the application, and on every proprietor of any other estate who holds land in common with the proprietors of the estate to which the application relates.

**Power to reject application on receipt of objection.**

**22.** If any person claiming a proprietary right as aforesaid states an objection to the partition on or before the day specified in the notification published under section 21, or at any subsequent time if it shall then seem fit to the Collector to admit such objection and the Collector, on consideration of the objection, is of opinion that there is good and sufficient reason for rejecting the application,

he may reject the same, and if he does so shall record the grounds of such rejection.

(See Rulings 47—48 in Part IV).

**23.** If any such objection raises any question of right or title or of extent of interest as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it appears to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such enquiry into the objection as he may deem necessary, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may, instead of rejecting the application as provided in section 22,—

Procedure when objection raises any question of right or title or of extent of interest.

- (a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate; or
- (b) direct that such proceedings be postponed for four months.

**24.** At the expiration of the said four months, the Collector shall resume the proceedings, unless the person who has made the objection, or some other person,—

Resumption of proceedings after postponement.

- (a) has obtained an order from a Civil Court directing that such proceedings be stayed, or
- (b) shows that a suit has been instituted before a Civil Court to try some question of such a nature as to lead the Collector to think the proceedings ought to be stayed until the question has been finally decided or until the proceedings in such Court in respect thereof shall have terminated.

(See Ruling 49 in Part IV).

**25.** No suit instituted in a Civil Court, after the lapse of four months after the Collector has—

Suits instituted after four months not to affect or stay proceedings for partition.

- (a) made a direction under clause (a) or clause (b) of section 23; or
- (b) recorded a proceeding under section 29, by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceedings which may have been taken under this Act for the partition of the estate.

**26.** (1) Every decree affecting a parent estate made by a Civil Court after the estate has been declared under section 29 to be under partition, but before the date specified in the notice served under section 94,—

Decree made while partition proceedings are in progress.

- (a) shall be made in recognition of the proceedings in progress under this Act for the partition of the estate, and



(b) shall be framed in such manner that the decree may be applied to and carried out in reference to, the separate estates which the Collector in his proceeding recorded under section 29 has ordered to be formed out of the parent estate.

(2) If the effect of any such decree be to declare any person or body of persons to be entitled to any extent of interest in the parent estate in excess of the extent of interest which the Collector in the said proceeding has declared to be held by such person or body of persons, the decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceeding, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings, be deemed to have the same rights, and to be subject to the same liabilities as a person who has acquired such extent of interest from a proprietor or body of proprietors by private purchase after an estate has been brought under partition under section 29 and on the date on which the decree was passed;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him or them of the lands representing the extent of interest so acquired;

and, notwithstanding anything contained in section 11, such application shall be dealt with as provided in section 30;

and the lands thereupon assigned to the said person or body of persons shall be amalgamated with his or their separate estate.

(See Ruling 50 in Part IV).

**Decree made  
after partition  
proceedings  
completed.**

**27.** (1) Every decree affecting a parent estate made by a Civil Court after the date specified in the notice served under section 94, in a suit which was instituted as mentioned in section 25,—

(a) shall be made in recognition of the partition proceedings, and

(b) shall be framed so as to give effect to the division of the parent estate into separate estates which has been ordered by the Collector, and so as not to disturb such division.

(2) If the effect of any such decree be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the

extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings, the decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors ;

and every person or body of persons so entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only ;

and the decree shall be executed by placing the person or persons so entitled in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the decree.

**28.** (1) A Civil Court may at any time direct the Collector, upon an application being made to him in accordance with sections 17, 18 and 19,—

**Power of Civil Court to order partition on application being made to Collector.**

- (a) to assign to any person land representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate ; or
- (b) to divide off from any estate any specified land or villages, and to assign it or them to any person to be held as a separate estate :

Provided that no Civil Court shall in any such case—

- (i) specify the amount of land revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or
- (ii) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

(2) The Collector shall assess the land revenue on every such separate estate in accordance with the provisions of this Act.

(See Rulings in Part IV).

**29.** If no objection be made, within the time specified in the notification published under section 21, to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for,

**Admission of application for partition and procedure thereon.**

he shall direct that the application be admitted, and shall record a proceeding—

- (a) declaring the estate to be under partition for the purpose of forming and assigning to the applicant a separate estate;
- (b) declaring the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants; or, if more than one separate application for separation has been admitted, the extent of interest in the parent estate which he finds to be held by every separate applicant or body of joint applicants, respectively;
- (c) declaring the extent of interest which remains to any recorded proprietor or body of recorded proprietors who are not applicants;
- (d) ordering that land proportionate to the interest so declared to be held by each applicant or body of joint applicants, respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants; and
- (e) ordering that land proportionate to the interest so declared to remain to any recorded proprietor or body of recorded proprietors who are not applicants shall be left forming a separate estate;

and shall at the same time issue a notice to each of the proprietors by registered post letter informing him that the application for partition has been admitted, and that the partition will be proceeded with, and requiring him to register his name and address and to appoint an agent to accept service of process and to make any appearance or application or do any act required or authorized to be made or done by a party to a partition under this Act.

(See Rulings 51—52 in Part IV.)

**Subsequent  
application for  
separation of  
another share.**

**30.** (1) At any time after the Collector has recorded a proceeding under section 29, and before the Deputy Collector has partitioned the land into separate estates under section 57, any recorded proprietor in the estate, other than the original applicant, may apply for the separation of his share.

(2) The Collector may reject or admit any such application; and if he admits it may order either that proceedings for effecting such separation shall be carried on simultaneously with the previous proceedings, or that compliance with the application be postponed until such previous proceedings have been completed, and the shares separated in accordance therewith.

(3) When the consideration of any application which has been postponed under sub-section (2) is resumed, the papers of the previous proceedings aforesaid may be used so far as they are applicable.

(See Ruling 53 in Part IV.)

**31.** The Collector may refer any application for partition to any Deputy Collector for the purpose of making enquiries and doing any other thing authorized or required by this chapter.

**Power of Collector to refer application for partition to Deputy Collector.**

Provided that every order—

- (a) rejecting an application under section 22.
- (b) directing, under section 23, that partition proceedings shall proceed or shall be postponed,
- (c) directing, under section 29, that an application for partition be admitted,
- (d) made under section 30, or
- (e) appointing a Deputy Collector under section 32, and every proceeding recorded under section 29,

shall be made and recorded, respectively, by the Collector and not by any Deputy Collector.

**32.** As soon as the Collector has declared an estate to be under partition, as provided in section 29, he may appoint a Deputy Collector to carry out the partition and all or any of the proceedings necessary thereto.

**Power of Collector to appoint Deputy Collector to carry out partition.**

**33.** (1) If, at any time after an order has been passed for making a partition of a parent estate, all the recorded proprietors of the estate present a petition to the effect that they do not wish the partition to proceed, the Collector may, after such enquiry as he considers necessary, strike the partition case off the file, and at the same time require the proprietors to pay all costs incurred in and about the partition.

**Power to strike partition case off the file on petition of parties. Recovery of costs.**

(2) Any such costs which have not already been levied as provided in section 37, shall be levied in proportion to the shares of the respective proprietors.

(See Ruling 54 in Part IV).

**34.** (1) If, at any time after an order has been passed for making a partition, it appears to the Commissioner that any sufficient reason exists why the partition should not be proceeded with, he may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition case should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file.

**Power of Commissioner to strike partition case off the file. Recovery of costs.**

(2) All costs which have not already been levied as provided in section 37 shall thereupon be levied in proportion to the shares of the respective proprietors.

(See Ruling 55 in Part IV).

## CHAPTER V.

## Establishments and costs.

**Power to  
appoint estab-  
lishments and  
prescribe scale  
of remuneration.**

**35.** The Deputy Collector, with the approval of the Collector, and subject to any rules made in that behalf by the Board, may appoint such persons as may be needed for the purposes of any proceedings under this Act and prescribe the scale of their remuneration.

**Power to appoint  
special establish-  
ment.**

**36.** In any district or division in which partitions are so numerous or extensive as to render necessary the appointment of a special establishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanction of the Board, may appoint such establishment.

**Estimating and  
levy of cost of  
partition.**

**37.** (1) As soon as possible after an estate has been declared to be under partition as provided in section 29, the Collector shall estimate the cost of making the partition; and the amount shall be levied from the proprietors in such instalments and at such times as may be fixed by rules made by the Board.

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in sub-section (1).

(See Ruling 56 in Part IV.)

**Apportionment of  
cost of partition.**

**38.** The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares:

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

the Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor, or proprietors, shall be paid by him or them.

(See Ruling 57 in Part IV.)

**Power of Deputy  
Collector to  
declare cost of  
local enquiry and  
by whom it is to  
be paid.**

**39.** Whenever any local enquiry is held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector,

the Deputy Collector may declare the cost which has been incurred by such enquiry and may direct that the entire cost so declared—

(a) shall be paid by the person making the objection, or by any one of the proprietors; or

(b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them; or

(c) shall be deemed to be a part of the cost of the partition.

**40.** (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof.

On completion of partition, total cost to be declared and account adjusted.

(2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.

(See Ruling 58 in Part IV).

**41.** (1) Whenever it appears to the Lieutenant-Governor\* that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collector, he may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Power to direct that salary of Deputy Collector and cost of special establishment be recovered as part of costs of partitions.

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

(3) Whenever it appears to the Lieutenant-Governor\* that the said work in any district is so great as to occupy a considerable portion, though not the whole of the time of a Deputy Collector,

or whenever a special establishment is appointed under section 36,

the Lieutenant-Governor\* may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

**42.** (1) The Lieutenant-Governor\* may direct that in any district a fund, to be called the "Estates Partition Fund," shall be formed, into which all sums levied from the proprietors of estates in such district in respect of partitions of their estates shall be paid and from which all costs of making partitions of estates in such districts shall, except as provided in section 43, be defrayed.

Estates Partition Fund.

(2) When the formation of an Estates Partition Fund has been directed in any district, the charges leviable in that district from the proprietors of any estate under

\* Now Governor in Council.

partition may, notwithstanding anything contained in the foregoing sections of this chapter, be levied according to a general scale of fees to be fixed by the Board.

(3) Such scale of fees shall be fixed, as nearly as may be, so that the receipts and expenditure of the said fund shall balance one another and shall be revised from time to time by the Board so as to secure compliance with this condition.

(4) The said fees shall be apportioned, and the proportionate amount thereof due from any proprietor or proprietors may be increased in the manner and under the circumstances mentioned in section 38.

(5) The said fees shall be levied from the proprietors in such instalments and at such times as may be fixed in accordance with any rules which the Board may make in this behalf.

(6) An abstract of the Estates Partition Fund of each district, made up to the end of each financial year, shall be published in the *Calcutta Gazette* and posted up at the office of the Collector of the district.

Order by Civil Court for payment by parties of costs of partition.

**43.** (1) Whenever any Civil Court makes a decree awarding or declaring any proprietary right in an estate, and requires the Collector to make a partition of the estate, the Court shall, subject to the provisions of sections 38 and 39, at the same time direct either—

(a) that the party or parties who has or have withheld the right so decreed shall defray the whole of the costs of the partition or the whole of the fees payable in respect of the partition under section 42, or

(b) that the said costs or fees shall be defrayed by all or any of the parties to the suit in which the decree was made, in such proportions as the Court may, upon a consideration of the particular circumstances of the case deem equitable.

(2) Copies of all orders passed under sub-section (1) shall be transmitted to the Collector for his guidance, together with the precept which the Court issues to him requiring him to divide the estate; and the Collector shall levy the said costs or fees from the parties, in accordance with the order, in the same manner and by the same means as if the levy of such costs or fees had been ordered by himself.

## CHAPTER VI.

### Proceedings up to the determination of the partition.

Powers of Deputy Collector in making a partition.

**44.** Every Deputy Collector making a partition shall, as regards the estate under partition, have so far as they are applicable all the powers exercisable by a Survey Officer under the Bengal Survey Act, 1875, and by a Revenue Officer employed in preparing a record-of-rights under Chapter X of the Bengal Tenancy Act, 1885.

**45.** As soon as the Collector has recorded a proceeding under section 29, declaring an estate to be under partition, the Deputy Collector shall, subject to the provisions of section 49, make a survey and prepare a record of existing rents and other assets of all lands included in the estate.

Deputy Collector when to make survey and prepare record of existing rents and assets.

**46.** In making a survey and preparing a record of existing rents and other assets of land under section 45, the Deputy Collector shall ascertain and record the following particulars, namely:—

Particulars to be recorded.

- (a) the name of each proprietor, landlord and tenant of the estate, and of every owner of revenue-free land and occupier of rent-free land therein;
- (b) the situation, area and boundaries of the land owned or occupied by each of the said persons, and the character and extent of the interest held by each and the area of all other land in the estate which is not held by tenants;
- (c) the rent then payable for all rent-paying lands—
  - (i) as stated by the landlord,
  - (ii) as stated by the tenant, and
  - (iii) as taken by the Deputy Collector for the purposes of the partition, and
- (d) the assets, if any, of all other lands.

and shall be guided by such rules as the Board may make under section 121, clause (l).

(See Ruling 59 in Part IV).

**47.** (1) When the Deputy Collector has made a survey and prepared a record of existing rents and other assets of land under section 45, he shall publish a notification, in a form to be prescribed by the Board, fixing a day on which he will be present in the village, or at a convenient place within limits of distance to be fixed by general or special order of the Board, for the purpose of attesting the survey papers and record of existing rents and other assets.

Attestation of survey papers and record of existing rents and assets.

(2) On the date fixed by the notification, or on any other date to which the proceedings may be adjourned, the entries made in the record of existing rents and other assets under section 46, or such of them as the Board may by rule prescribe, shall be read out, and corrected or added to as may appear necessary, in the presence of such of the interested persons as are in attendance.

(3) If the correctness of any entry is disputed, the Deputy Collector shall note the statements of such of the persons aforesaid as are interested in the disputed entry and shall, after making such local enquiry, if any, as he thinks fit, pass a summary order declaring what entry shall be accepted for the purposes of the partition.



(4) If the correctness of any measurement is called in question and a fresh measurement is demanded, the Deputy Collector may require the costs of the re-measurement to be deposited.

(5) If the re-measurement shows the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

**Publication of survey papers and record of existing rents and assets.**

**48.** When the survey papers and the record of existing rents and other assets have been attested as provided in section 47, the Deputy Collector shall cause a copy thereof to be locally published in such manner and for such period as the Board may by rule prescribe, and there shall be furnished to each landlord and tenant a copy of such of the entries relating to his estates, tenure or holding, as the case may be, as the Board may by rule prescribe.

(See Ruling 59 in Part IV).

**Power of Deputy Collector to accept previous survey, record-of-rights, measurements or rent-rolls, instead of making a new survey and a record of existing rents and assets.**

**49.** If at any time a survey of the estate under partition or any part thereof has been made or a record-of-rights prepared by an officer appointed in that behalf under the orders of the Government, or if any measurement papers and rent-rolls are filed under section 19, or at any time before a survey has been begun under section 45, and if the correctness of such measurement papers and rent-rolls is admitted in writing by all the proprietors, and is verified by the Deputy Collector after testing on the spot, and if the Deputy Collector is satisfied that the land revenue would not be endangered, the Deputy Collector may, unless the Collector otherwise directs, and after making any correction which may appear necessary, accept the papers of such survey, or the said record-of-rights, measurement papers or rent-rolls, instead of making a new survey and preparing a record of existing rents and other assets under section 45.

(See Ruling 60 in Part IV).

**Record of order, fixing of day for determining partition, and service of notices.**

**50.** When the documents referred to in section 48 have been published, or any documents referred to in section 49 have been accepted, the Deputy Collector shall record an order stating that such documents have been adopted for the purposes of the partition, and shall—

- (a) fix a day on which to determine the partition of the lands into the several separate estates,
- (b) publish a notification calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and at the same time serve a notice on each of the proprietors to the same effect, and

- (c) serve a similar notice on the proprietors of each of the adjoining estates, inviting them to appear and file their objections, if any, if they dispute the possession of any land of the estate under partition.

(See Ruling 60 in Part IV).

## CHAPTER VII.

### Partition by amicable arrangement or by arbitration.

**51.** (1) If all the recorded proprietors present, on or before the day fixed under section 50, a petition requesting to be allowed to make the partition on the basis of the papers adopted by the Deputy Collector under Chapter VI,—

Power to allow partition to be made by proprietors themselves or by arbitrators.

(a) privately among themselves, or

(b) by arbitration,

the Deputy Collector may grant the request.

(2) If, after such request has been granted, the proprietors or the arbitrators fail to make the partition within such time as may be fixed by the Deputy Collector in that behalf, the Deputy Collector shall make the partition himself.

**52.** When a partition has been referred to arbitration, the proceedings shall, except as hereinafter otherwise expressly provided, be conducted in accordance with the provisions of sections 506 to 522\* (both inclusive) of the Code of Civil Procedure, so far as they are applicable.

Procedure on reference to arbitration.

**53.** (1) The arbitrator or arbitrators shall, within a period to be fixed by the Deputy Collector, which period may be further extended by him, deliver to the Deputy Collector a full and complete paper of partition, in such form as the Board may, by rule, prescribe.

Arbitrators to deliver a partition paper.

(2) If default is made in complying with sub-section (1), the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

**54.** (1) The arbitrator or arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for his or their services.

Remuneration of arbitrators.

(2) The amount of such fees shall be fixed, with the approval of the Commissioner, by the Deputy Collector who made the reference to arbitration, and shall be deemed to form part of the cost of making the partition.

\* Now rules 1—16. Second Schedule, Act V of 1908 (*vide* Appendix B.)

Approval of  
Collector  
and other  
authorities.

**55.** Every partition made under this chapter by proprietors or by an arbitrator or arbitrators shall be subject to the approval of the Collector and the confirmation of the Commissioner:

Provided that no such partition shall be disallowed except—

- (a) on the ground of fraud, or
- (b) on the ground that the partition cannot be confirmed without endangering the safety of the land revenue.

Assessment of  
land revenue.

**56.** When a partition has been made under this chapter, the land revenue on each separate estate into which the parent estate is divided by such partition shall be assessed by the Collector in the manner prescribed by section 10.

#### CHAPTER VIII.

##### Making of Partitions by the Deputy Collector, and approval thereof by the Collector.

Procedure where  
no petition  
presented under  
section 51.

**57.** (1) If no petition is presented under section 51, the Deputy Collector shall, on the day fixed under section 50, or on any subsequent day or days to which the hearing may be postponed by notice posted at his office,—

- (i) consult all proprietors who are present, and
- (ii) hear, and, after such enquiry as he may consider necessary, dispose of, any objections which they may urge.

(2) The Deputy Collector shall then proceed to determine how the lands of the parent estate shall be partitioned into the separate estates, and all matters arising out of such partition; and shall cause to be prepared—

(a) a paper of partition, in a form prescribed by rules made by the Board, specifying in detail—

- (i) the lands which he has included in each separate estate, and the area of such lands,
- (ii) the rental of such lands, and other assets, if any, of each separate estate,
- (iii) the name or names of the recorded proprietor or proprietors of each separate estate,
- (iv) any stipulations which may have been made regarding places of worship, tanks or other matters mentioned in Chapter IX, and
- (v) the amount of land revenue to be assessed on each separate estate in the manner prescribed by section 10; and

(b) a map showing the lands which fall within each separate estate and the boundaries of such lands

(3) In making the partition the Deputy Collector shall be guided by the provisions of Chapter IX, and shall make the partition in the manner which, in his opinion, is on the whole most in accordance with those provisions and most equitable and convenient to all parties concerned.

(See Ruling 61 in Part IV).

**58.** (1) The partition, as made under this chapter, shall be submitted for the sanction of the Collector, and he shall by notice fix a day for the consideration of the same.

Submission of case to Collector; his duties.

(2) Every such notice shall be served on the proprietors and shall be published in the manner prescribed by section 104.

(3) The day fixed by the said notice shall be not less than fifteen days after the publication of the notice at the Collector's office.

(4) After hearing and disposing of any objection which may be preferred, the Collector shall pass such orders as he may think proper:—

- (a) approving the partition, with or without amendments; or
- (b) making a new partition; or
- (c) returning the papers to the Deputy Collector for amendment of partition, or for making a new partition, with such directions as to the Collector may seem fit in regard to the issue of a notice to appear to the proprietors or any of them who are specially interested.

(5) If the papers are returned to the Deputy Collector, the Collector shall, on their re-submission, proceed again to consider the partition as provided in the foregoing subsections of this section.

(See Ruling 62 in Part IV).

**59.** When the partition has been approved by the Collector, the Deputy Collector shall, after making such alterations as may be necessary in the partition paper or map, or preparing a new partition paper or map, in accordance with the orders passed by the Collector,—

Duties of Deputy Collector when partition has been approved by Collector, or when Collector makes a new partition.

- (a) cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate;
- (b) cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate, and
- (c) publish a notification at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been

tendered as aforesaid, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

(2) If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper mentioned in sub-section (1).

(3) The Deputy Collector shall also proceed in the manner hereinbefore provided when the Collector makes a new partition.

**Proprietor not appearing on fixed day not entitled to make objection.**

**60.** No proprietor who has failed to appear before the Deputy Collector in person or by agent on a day fixed, under section 50 or section 57, for the partition of the lands into the several separate estates, and no proprietor who has failed so to appear before the Collector on a day fixed under section 58, shall, unless he shows sufficient cause for such failure, be entitled at any subsequent time to make any objection to the orders which may be passed on such days respectively.

**Submission of the papers to the Commissioner after approval of the partition by the Collector.**

**61.** When a partition has been approved by the Collector, or when he has made a new partition, and after the tender of extracts and the publication of notification as provided in section 59, the Collector—

shall cause a notice to be served on each of the recorded proprietors, stating that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days from the date of the service of the said notice ;

and shall, after the issue of such notice, forward to the Commissioner all papers relating to the partition.

## CHAPTER IX.

### General principles for making partitions.

#### Lands held in common tenancy.

**Separate estates to be made compact.**

**62.** Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors and with the provisions of this chapter.

(See Ruling 63 in Part IV).

**Circumstances to be considered in making partitions.**

**63.** In selecting the villages or land to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from—

(a) situation ;

- (b) the vicinity of roads, railways or navigable rivers or canals;
  - (c) the nature and quality of the soil and produce;
  - (d) the quantity of cultivable and uncultivable waste land;
  - (e) the facilities for irrigation;
  - (f) the state of embankments and water-courses; and
  - (g) liability to accretion and diluvion;
- and any other circumstances affecting the value of the land.

(See Ruling 64-65 in Part IV).

**64.** (1) If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of the house may retain occupation thereof, with the buildings and grounds immediately attached thereto, upon agreeing to pay rent annually in perpetuity for the land occupied by the house, buildings, and grounds to the proprietor of the separate estate in which such land is included.

*Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.*

(2) The limits of the land so occupied and the rent to be paid for it shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

(3) In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from the house to some portion of the separate estate allotted to him.

**65.** Whenever the Deputy Collector thinks fit, he may apply the provisions of section 64 to gardens, orchards, land planted with bamboos, and any other land which in his opinion is of special value to the proprietor in whose occupation it is found to be, in consequence of improvements made by such proprietor or of the particular use to which such land is put.

*Power to apply section 64 to gardens, etc.*

**66.** The rent fixed in perpetuity on any land by the Deputy Collector under section 64 or section 65 shall be deemed, for the purposes of the partition, to be the assets of such land.

*Rent for land fixed under sections 64 or 65 deemed to be assets of the land.*

**67.** When the dwelling-house of one proprietor, with the buildings and grounds immediately attached thereto, has been included in the separate estate of another proprietor, and the rent to be paid in perpetuity for the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition,

*Redemption of rent fixed under section 64.*

the first-mentioned proprietor may apply to the Deputy Collector for permission to redeem the rent so fixed, and the Deputy Collector shall give such permission unless he is of opinion that the redemption would endanger the safety of the land revenue for the payment of which the separate estate in which such dwelling-house, buildings and grounds have been included will be liable.

Amount payable  
in redemption of  
rent.

**68.** (1) If the Deputy Collector gives permission as aforesaid, he shall certify the amount payable by the applicant in redemption of the rent.

(2) Such amount shall be ten *per centum* above the sum which would be required to produce, in interest at four *per centum* per annum, an annual sum equal to the said rent.

Such amount  
when payable.

**69.** The amount certified under section 68 may be paid to the Deputy Collector at any time before, but not after, possession is, under section 94, given to the several proprietors of the separate estates allotted to them.

Notice of payment  
to be given and  
land to be held  
rent-free.

**70.** On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate the land is situated—

- (a) that such payment has been made;
- (b) that the sum will be paid to him or to his authorized agent on application; and
- (c) that, from the date on which possession as aforesaid is given, the proprietor who has redeemed the rent of such land will be entitled to hold the land as a rent-free tenure secured against the proprietor to whom the notice is given and against any auction-purchaser at a sale for arrears of revenue, including the Government;

and from such date the land shall be so held as a rent-free tenure.

Collector to  
register the  
rent-free tenure.

**71.** The Deputy Collector shall at the same time give notice to the Collector of the district of the creation of such tenure, and the Collector shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act XI of 1859 (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*) or by any similar law for the time being in force.

Drawing of lots  
for equal  
shares.

**72.** When two or more of the separate estates consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of land,

unless the recorded proprietors of the equal shares agree among themselves as to the allotment of the equal separate estates and present a petition to that effect, or

unless for any other reason the Deputy Collector, with the sanction of the Collector, thinks proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

(See Ruling 66 in Part IV).

**73.** (1) When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate;

*Order and method of drawing lots when aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares.*

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn;

and may cause lots to be drawn in like manner as often as he thinks proper for such purpose.

(2) After lots have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

#### *Illustrations.*

I.—The partition of a parent estate is being made into the following shares :—

8 annas.		3 annas.
4 „		1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas, and 1 anna shares may be taken together and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand and the proprietors on the other hand of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares :—

6 annas.		3 annas.
4 „		2 „
		1 anna.

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas' share; and then, for the purpose of drawing lots in respect of the assignment of these two tracts the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining sharers; and he may again for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.



Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.

Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.

**74.** The Deputy Collector may, by notice, require any proprietor in respect of whose share lots are to be drawn as provided in section 72 or section 73, to attend at the office of the Deputy Collector in person or by authorized agent, at a time to be fixed by the Deputy Collector, for the purpose of drawing lots; and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf: and if at the time fixed for drawing such lots, such proprietors have failed to agree to any such joint appointment, or fail to cause the attendance of an Agent authorized to act jointly for all such proprietors; all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

In default, Deputy Collector may appoint a person to draw lots.

**75.** If any proprietor or proprietors fail to comply with a requisition of the Deputy Collector under section 74, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

#### Lands held in severalty.

Partition according to separate possession, and apportionment of land revenue.

**76.** (1) When the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor is, in pursuance of such arrangement, in possession of separate lands held in severalty as representing his interest in the estate, the joint application presented under section 7 may be to the effect—

- (a) that a partition of the estate be made by assigning to each proprietor or to two or more proprietors jointly, as his or their separate estate or estates, the lands of which they are in separate possession in pursuance of such arrangement, and
- (b) that each separate estate so formed be made liable for such portion of the entire land revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

(2) The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form will be sufficient to secure the payment of the annual amount of land revenue for which it is proposed to make such separate estate liable.

(3) If the Deputy Collector is not satisfied that the assets of each such separate estate will be sufficient as aforesaid, or that, with reference to the circumstances of

the case, the partition of the land and the assessment of the land revenue thereon may be made in the manner proposed without endangering the safety of the land revenue, he shall reject the application, unless all the recorded proprietors agree that the land revenue for which the parent estate is liable shall be apportioned among the separate estates so to be formed in such a manner that the safety of the total amount of the land revenue shall not be endangered.

**77.** Whenever the Deputy Collector who is appointed to carry out a partition finds that, in pursuance of a private arrangement formally made and agreed to by all the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate parcels of land held in severalty as representing portions only of their respective interests in the parent estate, while other land of the parent estate is held in common tenancy between such proprietors, then, notwithstanding anything contained in section 7, a joint application shall not be required, and the Deputy Collector shall allot to the separate estate of each proprietor the land of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Lands of which each proprietor is in possession to be allotted to him.

*Explanation.*—Land held in the occupation of the several proprietors of an estate as *sir, khamar* or *nij-jole*, or under any other similar denomination, shall not be deemed to be land held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bond fide* division, by private arrangement among the proprietors of land held by tenants.

**78.** Notwithstanding anything in section 77, the Collector may cause any transfer of land agreed to by the parties to be made from the possession of one proprietor to that of another.

Collector may cause transfer of lands agreed to by parties.

**Lands held in common tenancy and lands held in severalty.**

**79.** Places of worship, burning-grounds and burial-grounds which have been held in common previous to the partition of an estate, and land of which the proceeds have been assigned by the proprietors jointly for religious, charitable or public purposes, shall continue to be held in common unless the proprietors otherwise agree among themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

Places of worship, etc.

**80.** (1) Tanks, wells, water-courses, reservoirs and embankments shall be deemed to be attached to the land for the benefit of which they were originally made.

Tanks, wells, water-courses, reservoirs and embankments.

(2) In cases in which, from the extent, situation or construction of any such works, it is found necessary that

they should remain the joint property of the proprietors of two or more separate estates, the paper of partition shall specify, as far as the circumstances admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

Splitting up of  
tenure or holding  
and apportion-  
ment of rent  
thereof.

**81.** (1) No tenure or holding shall be split up for the purposes of a partition unless it is reasonably necessary to do so in order to effect an equitable partition.

(2) If a tenure or holding be split up as aforesaid, the total existing rent thereof, as ascertained under Chapter VI, shall not be altered, but shall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

(See Ruling 67 in Part IV).

Land held  
rent-free not to  
be divided,  
except with  
consent of  
recorded  
proprietors.

**82.** When the Deputy Collector finds in a parent estate land which is claimed to be held rent-free and for which no rent is actually paid (whether the proprietors of the estate do or do not claim a right to receive rent from the land), he shall not make any division or assignment of such land among the separate estates, but shall specify in the partition papers and proceedings that such land is left appertaining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate.

Provided that such land or any of it may be allotted among the different separate estates with the consent of all the proprietors of the parent estate :

(See Rulings 68-69 in Part IV).

Land held at  
fixed rent on  
permanent  
intermediate  
tenure.

**83.** (1) When the Deputy Collector finds in a parent estate any land which is held at a fixed rent on a patni or other permanent intermediate tenure created by all the proprietors of the estates, or admitted by all the recorded proprietors to have been so created, he may either—

(a) assign such land and the assets thereof entirely to one or more of the separate estates formed out of the parent estate; or

(b) leave such land unassigned to any separate estate and specify in the partition paper and proceedings that the land is left appertaining jointly to all the separate estates which are formed out

of the parent estate in the proportion which each separate estate bears to the parent estate.

(2) In the event of such land being so left unassigned the Deputy Collector shall assign to each separate estate such share of the rent of the tenure as bears the same proportion to the entire rent of the tenure as the separate estate bears to the parent estate.

(3) In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the land comprised in the tenure, and all other circumstances of the case.

(See Rulings 70—73 in Part IV).

**84.** When any land is held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common land of which the assets are in proportion to the interest which the proprietors of such estates hold in the said common land;

Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.

and all the provisions of this Act in respect of the allotment, between the shareholders in one estate, of land which is held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common land to the estate under partition;

and, in respect of the service of notices, the hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and all other proprietors of estates who have an interest in the said common land, shall be deemed to be joint proprietors of a parent estate consisting only of the land so held in common:

Provided that all costs of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be costs of making the partition of the estate which is under partition, and shall be leviable, as provided by this Act, from the proprietors of such estate; and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such costs.

(See Rulings 74—78 in Part IV).

**85.** Notwithstanding anything contained in section 84, if it appears to the Collector that the proceedings for any such division have been unnecessarily delayed and the cost of such division enhanced, by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him,

When proprietors of other estates may be required to pay portion of the costs of making a division under section 84.

the Collector may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost;

and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

**Allotment made under section 84 to be submitted to the Collector.**

**86.** Every allotment made under section 84 shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and, if he rejects it may make or direct to be made another allotment.

(See Ruling 79 in Part IV).

**Land so allotted how to be dealt with.**

**87.** When any allotment made under section 84 has been approved by the Collector, the land so allotted shall be dealt with in every respect as if it were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common land.

**Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.**

**88.** (1) If a dispute or doubt is found to exist as to whether any land forms part of a parent estate, the Deputy Collector shall, after due notice to the parties interested, enquire into the fact of possession, and shall report his conclusions to the Collector; and thereupon the Collector shall dispose of the matter as follows :—

- (a) he may order that the partition case be struck off the file, if such an order appears to him advisable, and whether the possession of the disputed land is with the proprietors of the parent estate or otherwise; or
- (b) he may order that the partition shall proceed, and that the disputed land be treated as part of the estate under partition, if the possession of such land is with the proprietors of the parent estate and the claim of the other parties to the right in such land appears to him untenable; or
- (c) he may order that the partition shall proceed, but that the disputed land shall not be treated as part of the estate under partition, if the possession of such land is with the other parties and the claim of the proprietors of the parent estate to the right in such land appears to him untenable:

Provided as follows :—

- (i) If a claim to land alleged to be in dispute is filed after the Deputy Collector proceeds under section 57 to determine how the lands of the parent estate shall be partitioned into the separate estates, the claim shall not be enquired into under this section unless the delay on the part of the claimant is explained to the satisfaction of the Deputy Collector;

- (ii) no partition shall be made in any case mentioned in this section if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate at any subsequent time would, in the opinion of the Collector, endanger the safety of the land revenue for which such estate would be liable after the partition.

(2) If a partition case is struck off the file under clause (a) of this section, no fresh application for partition shall be admitted unless and until the applicant shows that the dispute or doubt aforesaid has been decided by a Court of competent jurisdiction, or has been amicably settled; but, if a fresh application is admitted, the proceedings shall be revived from the point at which they were interrupted.

(See Rulings 80—87 in Part IV).

**88.** If, after a partition has been completed in pursuance of an order passed by the Collector under section 88, clause (b), the proprietor of any separate estate is dispossessed by a decree of a Court of competent jurisdiction of any land which has been assigned to his estate by the partition,

Procedure when partition completed in pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

the partition shall not be disturbed, but such proprietor shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession;

and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the dispossession does not fall.

## CHAPTER X.

### Procedure before the Commissioner up to the completion of a partition.

**90.** (1) If it appears to the Commissioner that the proceedings of the Collector should be amended, or if an appeal or objection is presented within the time allowed by section 61, the Commissioner shall, by order, fix a day (not being less than thirty days from the date of such order) for hearing and disposing of the case, and shall cause notice of such day to be served through the Collector on all the parties.

Procedure if proceedings require amendment or if appeal or objection presented.

(2) On the day so fixed, or on any subsequent day to which the hearing of the case may extend or is postponed by a notice posted up in his own office, the Commissioner shall, after hearing and disposing of all appeals and

objections, and calling for any further information which he may consider necessary, either confirm the partition as approved or made by the Collector, with or without amendments, or return the papers of the partition to the Collector, for any amendments which the Commissioner may think proper to be made.

(3) If the papers are returned to the Collector for amendment, the Collector shall proceed to make the required amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector, and shall thereafter return the papers to the Commissioner, who may then confirm the partition.

Procedure in  
other cases.

91. If it does not appear to the Commissioner that the proceedings of the Collector require amendment, or if no appeal or objection is presented within the time allowed by section 61, the Commissioner may proceed to consider the case without issuing any notice, and may confirm the partition as approved or made by the Collector.

Commissioner  
may return the  
papers for  
amendment or  
enquiry as often  
as he thinks fit.  
Procedure by  
Collector on  
receipt of  
Commissioner's  
order  
confirming, or  
Board's order  
sanctioning a  
partition.

92. The Commissioner may, before confirming a partition, return the papers for amendment or enquiry as often as he thinks fit, and as often as he so returns them the procedure prescribed in the foregoing sections of this chapter shall be applicable.

93. (1) After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition,

or if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board, if such order does not set aside but maintains, with or without amendments, the partition as confirmed by the Commissioner,

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be.

(2) If the partition as so confirmed or sanctioned involves any amendments which may conveniently be made on any extracts of the partition paper or on any maps which have been prepared and delivered to recorded proprietors under section 59, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments, requiring him to produce such extracts and maps in order that such amendments may be noted on them;

and, if the alterations made in the partition as so confirmed or sanctioned be such as to make it desirable

to prepare fresh extracts or maps as aforesaid, the Collector shall cause such fresh extracts or maps to be prepared; and shall cause a notice to be served on each proprietor declaring the extract and map which was delivered under section 59 to be cancelled, and requiring him to take out of the Collector's office the fresh extract or map which has been prepared.

**94.** (1) The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to them, and, if necessary, may require the assistance of the Magistrate in giving such possession; and shall cause to be served on every recorded proprietor of a separate estate a notice—

**Procedure as to giving possession of separate estates.**

(a) informing him that from the date specified in such notice the separate estate assigned to him, as described in the extract from the partition paper prepared and delivered or tendered to him under section 59 or section 93, as the case may be, will be deemed to be separated from the parent estate, and to be separately liable for the amount of land revenue specified in the notice, and

(b) calling upon him to enter into a separate engagement for the payment of such land revenue.

(2) The date specified in such notice shall be not more than three months after the proprietors have been given possession of their respective separate estates as provided in sub-section (1).

(See Rulings 88—89 in Part IV).

**95.** From the date specified in such notice, each separate estate shall be borne on the revenue-roll and General Register of the Collector as a distinct estate separately liable for the amount of land revenue assessed upon it under this Act, and shall be so liable whether or not the proprietor has entered into a separate engagement for the payment of the amount of land revenue so assessed upon the estate.

**Each separate estate to be borne on the revenue-roll and General Register as separately liable for the land revenue assessed upon it. Boundary marks.**

**96.** (1) The Collector may direct the erection of such boundary marks as he thinks proper, to distinguish the lands of each separate estate; and the cost of such boundary marks shall be deemed to be costs of the partition.

(2) Boundary marks so erected shall be assigned to zamindars or to zamindars jointly with tenure-holders for preservation, as provided in the third clause of section 29 of the Bengal Survey Act, 1875; and, after they have been so assigned, the provisions of sections 19, 20 and 52 to 57 (both inclusive) of the said Act shall apply in the case of such boundary marks.



## CHAPTER XI.

## Miscellaneous.

**Powers of Deputy Collector as to production of documents and attendance of witnesses.**

**General power to refer to arbitration.**

**Saving of tenures, leases and encumbrances.**

**97.** For the purposes of any enquiry under this Act, the Deputy Collector shall, in addition to the powers specifically conferred upon him by this Act, have the powers conferred by Chapters X and XIV of the Code of Civil Procedure\* for compelling the production of documents and enforcing the attendance of witnesses.

**98.** The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition; and the provisions of sections 52, 53 and 54 shall, as far as possible, be applicable to such references.

**99.** If any proprietor of an estate held in common tenancy and brought under partition in accordance with this Act has given his share or a portion thereof in patni or other tenure or on lease, or has created any other encumbrance thereon, such tenure, lease or encumbrance, shall hold good as regards the lands finally allotted to the share of such proprietor, and only as to such lands.

## Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of the whole of his interest in the estate, entitling B as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every raiyat on the estate; and

partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become patnidar of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the raiyats on that estate.

II.—A, a proprietor of a quarter share in a joint-undivided estate held in common tenancy, gives to B a patni tenure of one-half of his share in the estate, entitling B as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every raiyat on the estate; and partition of the estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become patnidar of one-half of A's separate estate, and will hold his patni in common tenancy with the half of A's interest which A has not given in patni, so that B will be entitled to collect one-half of the rent payable by every raiyat on A's estate and A will be entitled to collect the other half.

(See Rulings 90—96 in Part IV).

**Uniting of estates.**

**100.** (1) If two or more estates come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors may, after being recorded as proprietors, apply to have the estates united and to hold them as a single estate.

(2) Every such application shall be made in writing to the Collector, and the Collector shall, if he sees no objection to doing so, comply with it not less than thirty

\* Now sections 30—32 and Orders XI, XII, XIII, and XVI, First Schedule, Act V of 1908 (vide Appendix B).

days after the publication of a notification thereof, and shall then cause the necessary entries to be made in the records of his office and report the case to the Commissioner.

**101.** If any separate estate created under this Act falls into arrear so as to necessitate a sale of the land for the discharge of the arrear at any time within six years from the date of the confirmation or sanction of the partition by the Commissioner or the Board, as the case may be,

*If separate estate falls into arrear, Collector to enquire into cause and report to Commissioner.*

the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall enquire whether the same is due to any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

**102.** If it is proved to the satisfaction of the Lieutenant-Governor\* at any time within six years from the date of the confirmation or sanction of a partition by the Commissioner or the Board, as the case may be, whether or not upon enquiry made under section 101, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land revenue for which such estate was made liable, or that the amount of land revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate,

*Power of Lieutenant-Governor\* to order a new allotment of the land revenue.*

the Lieutenant-Governor\* may order a new allotment of the land revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable.

[6, s. 188.]

**103.** (1) Whenever the Lieutenant-Governor\* passes an order under section 102 for the re-allotment of the land revenue on any separate estate, he may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay to the recorded proprietors of the estates which have been over-assessed a sum equal to the annual amount in which the latter are found to have been over-assessed; and in default of payment such sum shall be recoverable as provided in section 108.

*Power to require proprietors of under-assessed estates to make refund to proprietors of over-assessed estates.*

(2) No order passed by the Lieutenant-Governor\* under sub-section (1) shall be liable to be contested in any Court

\* Now the Governor in Council.

**Publication of  
notifications.**

**104.** Every notification required by this Act to be published shall, unless it is otherwise specially directed, be published by posting up copies of the same—

- (a) at the office of the Collector,
- (b) at the office of the Deputy Collector who is to make, is making or has made the partition,
- (c) at the village office or village offices, if any, of the proprietors of the parent estate, and
- (d) in one or more of the principal villages in the said estate.

**Service of  
notices.**

**105.** (1) Any notice required by this Act to be served on any person may be served—

- (a) by delivering the notice to the person to whom it is directed, or, on failure to effect such delivery, by posting it on some conspicuous part of the house in which the said person usually resides ; or
  - (b) by sending a registered letter, containing the notice, to such person, directed to the address, if any, which he has registered under this Act ; or
  - (c) by delivering the notice to a general agent of the person to whom it is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act ; or
  - (d) by affixing a copy of the notice at the village office of the person to whom the notice is directed ;
- or, if no such village office be found, and if the notice cannot be served in any of the other modes mentioned in this section, by affixing a copy of the notice on some conspicuous place on the estate to which the notice relates.

(2) Where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, the service of a notice, in any of the modes mentioned in sub-section (1), on any one of such joint applicants shall be deemed to be good and sufficient service on both or all of them.

**Mistakes and  
irregularities not  
to vitiate  
proceedings.**

**106.** If the directions of this Act are in substance and effect complied with, no proceedings thereunder shall be affected—

- (a) by reason of any mistake or informality unless any person has suffered, or is in danger of suffering, material injury in consequence of such mistake or informality ; or

- (b) by reason of the omission to publish any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's register as proprietor of the estate in respect of which the notice is required by this Act to be served.

**107.** If any proprietor or other person fails to comply, within the time fixed therefor by notice, with any requisition made upon him under this Act by the Collector or Deputy Collector, the Collector or Deputy Collector, as the case may be, may impose upon him such daily fine as he may think fit, not exceeding fifty rupees;

*Fine in case of non-compliance with requisition.*

and such fine shall be payable daily until the requisition is complied with;

and the Collector or Deputy Collector, as the case may be, may proceed from time to time to levy the amount which has become due in respect of any such fine :

Provided that, whenever the amount payable exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of the fine shall be made otherwise than by the authority of the Commissioner.

(See Ruling 97 in Part IV).

**108.** Except as herein otherwise expressly provided, all fees, fines, costs, and other sums ordered under this Act to be paid by any person shall be deemed to be public demands, and shall be recoverable under the Public Demands Recovery Act 1895\*.

*Fees, etc., to be recoverable as public demands.*

(See Ruling 98 in Part IV).

**109.** All or any powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector;

*Powers and functions of Deputy Collector may be exercised by Collector.*

and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, then if such act has been done, or such order has been made, by the Collector it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

3. 141 ] **110.** (1) The Lieutenant-Governor may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of a parent estate.

*Power to vest Collector or Deputy Collector with settlement powers.*

\* Now Act III of 1912.  
† Now Governor in Council.

(2) Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

**Appeals to the Collector, and admission by him of objections.**

**111.** (1) An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector—

- (a) directing, under section 39, by whom or how the costs of an enquiry held in consequence of an objection raised shall be paid ;
- (b) made under section 47, sub-section (3), declaring what entry in a record of existing rents and other assets of land shall be accepted for the purposes of the partition ;
- (c) made under section 50, adopting a record of existing rents and other assets of land ;
- (d) refusing, under section 51, to allow recorded proprietors to make a partition privately among themselves or by arbitration ;
- (e) rejecting, under section 76, sub-section (3), an application for partition according to separate possession ;
- (f) directing, under section 81, sub-section (3), that a tenure or holding be split up, and that the rent thereof be apportioned ; or
- (g) imposing a fine under section 107.

(2) Objections to any other orders passed by the Deputy Collector shall only be admitted by the Collector if made when he proceeds to consider a partition under section 58.

(See Ruling 99 in Part IV).

**Appeals to the Commissioner, and admission by him of objections.**

**112.** (1) An appeal, if presented to the Commissioner or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of a Collector (whether such order be passed by the Collector in the first instance or in appeal from the order of a Deputy Collector)—

- (a) rejecting an application for the partition of an estate, or for the separation of a share, or putting an end to proceedings for effecting a partition or separation after the application has been admitted ;
- (b) directing, under section 29, that an application for partition or separation be admitted ;
- (c) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition ;
- (d) made under section 50, adopting a record of existing rents and other assets of land ;

- (e) refusing, under section 55, to approve a partition made by proprietors or by an arbitrator or arbitrators;
  - (f) refusing to allow a partition to be made under section 76 in accordance with separate possession;
  - (g) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition;
  - (h) confirming, amending or rejecting, under section 86, an allotment made under section 84;
  - (i) made under section 88, when a dispute or doubt exists as to whether any land forms part of a parent estate;
  - (j) imposing or confirming the imposition of a fine under section 107; or
  - (k) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.
- (2) Objections to any other orders passed by the Collector shall only be admitted by the Commissioner if made when he proceeds to consider a partition under section 90 or section 91.

**113.** An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date of the order appealed against, shall lie to the Board against every order of the Commissioner -

**Appeals to the Board.**

- (a) confirming, modifying or reversing any order of the Collector rejecting an application for the partition of an estate, or putting an end to proceedings for effecting a partition after the application has been admitted;
- (b) confirming, modifying or reversing any order of the Collector directing, under section 29, that an application for partition be admitted;
- (c) confirming or amending a partition as approved or made by the Collector; or
- (d) imposing, or confirming the imposition of, any fine amounting to five hundred rupees, or ordering, or confirming an order directing, the payment of any costs amounting to more than five hundred rupees.

(See Rulings 100-101 in Part IV).

**114.** (1) Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner, no further appeal shall lie; but the Board, acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit.

**Limitation of appeals; revision by Board: further appeal to Board.**

(2) When an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is modified or reversed by the Commissioner, a further appeal shall lie to the Board in the following cases only, namely, when the order of the Collector was one—

- (a) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition, when the excess which he is ordered to pay exceeds five hundred rupees;
- (b) made under section 50, adopting a record of existing rents and other assets of land;
- (c) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition; or
- (d) confirming, amending or rejecting, under section 86, an allotment made under section 84.

(See Rulings 102—104 in Part IV.)

**Stay of proceedings pending appeals or revision.**

**115.** When an appeal is presented under section 111, section 112 or section 113, or when the Board calls, under section 114, sub-section (1), for the record of a case, the proceedings shall not be stayed pending the appeal or revision unless the appellate or revising authority so directs.

**Revision of proceedings connected with giving possession.**

**116.** (1) Any proceedings of a Deputy Collector, Collector or Commissioner connected with giving possession to the proprietors of their respective separate estates in pursuance of section 94 may be set aside or amended by the Collector, Commissioner or Board, as the case may be, provided that the revising authority shall, within three months from the date on which such possession has been given, make an order to the effect that such proceedings are under its consideration.

(2) Every such order shall, when made by the Commissioner or the Board, be communicated to the Collector of the district, and the Collector shall cause all such orders to be published by notification.

(See Rulings 105 in Part IV.)

**Orders as to costs on appeal.**

**117.** The Collector, the Commissioner and the Board, respectively, may pass such orders as they think fit in respect of the payment of the costs of any appeal which is made to them respectively under this Act.

(See Ruling 106 in Part IV.)

**Powers of officers exercising jurisdiction under this Act with regard to false evidence or forgery.**

**118.** If, in any case in which a Collector or other officer exercises jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and of the person charged with committing the

same, as are vested by the Code of Criminal Procedure, 1882\* in a Civil Court, when any such offence is committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceedings in such Court—

**119. No order—**

- (a) refusing to admit an application for partition or to carry out a partition, on any of the grounds mentioned in section 11; or
- (b) made under section 20, section 30, Chapter V, Chapter VII, Chapter VIII, Chapter IX, (except section 81), Chapter X, section 107 or section 117, shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act:

Certain orders under this Act not liable to be contested or set aside by civil suits.

Provided that—

- (i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 84 or section 86; or
- (ii) any person who is aggrieved by an order made under section 88,

may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

(See Rulings 107—109 in Part IV).

**120.** In the execution of the duties imposed on the Board by this Act, the Board shall be guided by such orders or instructions as they may from time to time receive from the Lieutenant-Governor.†

**121.** The Board may from time to time, with the previous sanction of the Lieutenant-Governor,† make rules—

Board to be guided by orders or instructions of Lieutenant-Governor. \* Power of Board to make rules.

- (a) prescribing, in pursuance of section 18, clause (g), particulars to be contained in applications for partition;
- (b) for regulating the appointment of persons under section 35 and the scale of their remuneration, and for enabling an officer making a partition to keep himself informed of the proceedings of such persons and to exercise a proper control over them;
- (c) for determining the costs of partitions;
- (d) for fixing, for the purposes of section 37, the instalments in which and the times at which the cost of making partition shall be levied from proprietors;

\*Now Act V of 1898.

†Now Governor in Council.



- (e) for fixing a general scale of fees for the levy of charges from proprietors of estates under partition, when the formation of an Estates Partition Fund has been directed under section 42;
- (f) for fixing the instalments in which and the time at which the said fees shall be levied from proprietors;
- (g) generally, for regulating the receipts, disbursements, and management of any Estates Partition Fund formed under the said section 42;
- (h) prescribing what entries in the record of existing rents and other assets shall be read out and, when necessary, corrected or added to, under section 47, sub-section (2);
- (i) prescribing the manner in which and the period for which copies of survey papers and records of existing rents and other assets shall be published under section 48;
- (j) prescribing the entries in survey papers or records of existing rents and other assets of which copies shall be furnished to landlords and tenants under the said section 48;
- (k) prescribing the form of partition papers to be delivered under section 53 or prepared under section 57; and
- (l) generally, for the guidance of officers in conducting partitions or making a survey and preparing a record of existing rents and other assets of land under this Act.

## PART II.

**Rules made by the Board of Revenue, with the previous sanction of Government, under section 121 of the Estates Partition Act, V (B. O.) of 897 (*vide* Notification No. 4015 Bat., dated the 27th October 1919).**

Section 121  
(e).

1. In addition to the particulars required to be entered in the application under section 18, the Collector shall require the applicant to furnish, as far as possible, the names and addresses of the proprietors of the estate or estates surrounding the estate which is to be partitioned, the name of the post-office of the area within which each of the said proprietors resides, the names and numbers of the estates owned by them, and the date of final publication of a record-of-rights (if any) of the estate to be partitioned.

Particulars to be entered in the application under section 18.

Section 121  
(e).

2. The costs of partition may include the following:—

Costs of partition.

- (a) The salary, travelling allowance and contributions, if any, to pension and leave of establishments appointed under sections 35 and 36 of the Act.
- (b) The salary, travelling allowance and contribution to pension and leave of the Deputy Collector appointed under section 41 of the Act, including any additional remuneration on account of employment in partition work, subject to the conditions and limitations imposed by sub-sections (2) and (3) of the said section.
- (c) Contingent expenditure, including—
  - (i) the cost of service of notices and of the publication of notifications under the Act;
  - (ii) the cost of stationery and forms and survey instruments;
  - (iii) the cost of making any copies of maps and records that may be required under this Act for the purposes of the partition;
  - (iv) any other charges necessary for the completion of the partition;
  - (v) cost of boundary marks under section 30.

**NOTE.**—For Instructions under rule 2, see Part III.

Payment of  
costs of  
partition by  
instalments.

3. (a) The cost of making a partition, as estimated under section 37 (1), shall ordinarily be paid in not less than three instalments, of which the first shall consist of one-half of the total amount estimated : Section 121  
(d).

Provided that, when the total demand from a shareholder is less than ten rupees, it shall be realised in one instalment only, as soon as the estimate has been sanctioned by the Collector.

(b) The first instalment shall be leviable by the Collector as soon as he has sanctioned the estimate under section 37 (1), and the remaining instalments at such times as the Collector may think fit, the dates being entered in the Ledger of Partition Fees and in the Proprietors' Ledger (Forms 2 and 4, Appendix A):

Provided that the entire cost of a partition shall be realised before the partition is confirmed.

(c) Every instalment shall be paid within one month from the date on which a demand for it has been served upon the person or the accredited agent of the person from whom it is due; and, in the event of non-payment within one month from such date, the Collector shall proceed to realise the amount under the law in force for the recovery of public demands.

Scale of fees.

4. The maximum scale of fees to be levied under section 42 (3) of the Act shall be at the rate of Re. 1-4 per acre, provided that where the partition is to be based on a survey and record-of-rights already prepared the maximum shall not exceed annas 8 per acre. Section 121  
(e).

Estimates prepared from rates exceeding the above maxima or amounting to more than Rs. 1,000 shall be submitted through the Commissioner to the Board of Revenue for orders, with an explanation of the rates proposed, provided that if the excess over the sanctioned scale is less than 25 per cent. of such a scale and the total estimate does not exceed Rs. 1,000 orders may be passed by the Commissioner.

Payment of  
costs of  
partition by  
instalments.

5. The fees leviable from the proprietors under section 42 (5) shall be paid in not less than three instalments, of which the first shall consist of one-half of the total amount estimated. The first instalment shall be leviable by the Collector as soon as the estate is declared to be under partition, and the remaining instalments at such times as the Collector may think fit, provided the entire cost shall be realised before the partition is confirmed. Every instalment shall be paid within one month from the date on which a demand for it shall have been served upon the person or the accredited agent of the person from whom Section  
(f).

it is due, and, in the event of non-payment within one month from such date, the Collector shall proceed to realise the amount under the law in force for the recovery of public demands.

Section 121

1) (i) (ii) (b).

6. In making a survey and record under the provisions of sections 46, 47 and 48 of the Act, the Deputy Collector shall be guided by the provisions of Chapter X of the Bengal Tenancy Act, 1885, and the rules framed by Government under that Act, and the procedure laid down for the preparation of a record-of-rights under Chapter X of the said Act in Part II of the Bengal Survey and Settlement Manual, 1917, provided that where a dispute exists regarding the boundary of the estate or estates under partition, the dispute shall be disposed of subject to the provisions of section 88 of the Act.

Procedure for  
Survey and  
record.

Section 121

(4)

7. The partition paper required under sections 53 and 57 of the Act shall be prepared in Form 19 (Appendix A).

Partition paper.

Section 121

(f).

8. Separate engagements for the payment of land revenue required by section 94 (1) (b) of the Act shall be executed in Form 20 (Appendix A).

Engagement for  
land revenue.

**PART III.****Instructions of the Board of Revenue.****CHAPTER I.****General Procedure.**

**Register No. 2 of  
partition cases.**

1. All partition cases must be entered in Register 2 (Form 17, Appendix A). On completion of a partition the Collector should see that column 6 of the register (number of new estates in Part I of the General Register) is properly filled up, after communicating the necessary information to the Land Registration and Tauzi Departments.

**Check of  
particulars in  
application.**

2. When an application for partition is filed under section 17 of the Act (*vide* Form 24, Appendix A), the Record-keeper should be required to report the names of all villages included entirely or in part in the estate, which is the subject of the application, and to verify carefully the particulars stated in the application under the terms of section 18 by reference to the General Registers and the record-of-rights of the estate (if any).

**Record of case.**

3. In order to ensure that the records of partition cases are properly prepared and that the progress of each case can be properly watched, an order sheet must be attached to each record. All orders thereon, as well as partition papers, maps and other records must bear the dated signature of the Partition Officer.

**Programme.**

4. Partition Officers should in all cases fix either generally or specially a reasonable time within which the proceedings of each case at each stage should be completed. Should this time be exceeded in any particular instance, the reasons for the delay must be placed on record.

**Progress return.**

5. A return showing progress made in the disposal of partition cases shall be prepared in Form 16, Appendix A. If the return shows continued delay at any stage, the Collector shall note the reasons therefor. The return shall be submitted quarterly to the Commissioner, a copy of the return for the quarter ending 30th September being forwarded by him to the Board with such remarks as he considers necessary.

**Completion of  
case.**

6. No partition case shall be deemed to be disposed of for the purposes of the quarterly return and removed from the file until—

- (a) any appeal against the proceedings of the Revenue Officers has been decided, or three months have elapsed without any order being made under section 116;

- (b) the date prescribed in the notice under section 94 for the commencement of separate liability has elapsed, and the Tauzi-navis has certified that the joint estate is not in arrears, or, if in arrears, until the arrear has been paid; and
- (c) an order directing final adjustment under section 40 has been passed by the Collector.

7. For the purpose of Appendix XIV to the Land Revenue Administration Report, a partition case should be treated as completed as soon as notices have been issued under section 94 and the Collector has passed an order of adjustment of the accounts under section 40. When work has been completed up to these stages, the case should no longer be regarded as being on the file merely because all items have not been realised from, or all refunds made to proprietors.

Entries in Land Revenue Administration Report.

8. All notifications under this Act shall be published, and all notices shall be served (except such as are served by post) by means of the Nazir's peons, fees being charged on the scale prescribed for the service of executive processes and denoted in the usual way by adhesive stamps.

Publication of notifications and service of notices.

9. Before publishing a notification under section 21, the Collector may require the proper amount of fees to be paid by the applicant. If the application is admitted under section 29, the fees thus paid will be included in the expenses of partition, and the expense incurred in the publication of this notification and service of the summons should be taken as a basis for the calculation of the expense to be incurred on account of the other notifications and notices which are required by the Act.

Cost of publication of notification.

10. In order that changes amongst proprietors during the pendency of a partition case may be duly noted in the partition records and registers, the Partition Officer may at any time require the Record-keeper to verify and correct the report furnished under Instruction 2; and he shall always require him to bring such report up to date (a) when applications are submitted under section 30; (b) before the partition paper is prepared under section 57; and (c) before the partition records are submitted to the Commissioner for confirmation. The Partition Officer must also see that necessary corrections due to any changes in Register D are promptly made in the Proprietors' Ledger (Register V) and apportionment statement No. A.

Corrections in names of proprietors.

11. Under section 88 of the Act, objections to the effect that lands under division do not form part of the parent estate should be made before the Partition Officer proceeds under section 57 to determine how the lands of the parent estate shall be partitioned. If any such objections are made after a partition has been finally confirmed under section 93, they should not be entertained, but the objectors should be referred for remedy to the Civil Court.

Objections to wrong inclusion of lands.

Rectification of mistakes.

12. If subsequent to the date prescribed after delivery of possession under section 94 of the Act it be discovered that a mistake has been made in the partition, *e.g.*, that one party has been given more land than he is entitled to and another less, no provision exists in the Act by which revised partition statements can be drawn up and referred to the Board for approval under section 114. In such cases a proceeding should be drawn up by the Commissioner to be filed with the partition record, the corrected entries with regard to lands and revenue being accepted for the correction of Registers C and D and the Tauzi Roll. Action may be taken under the provisions of section 102 of the Act in cases where that section is applicable.

## CHAPTER II.

### Preparation of a Survey and Record under Chapter III of the Act.

#### Section I.—General Procedure.

Procedure for survey and record.

13. In making a survey and preparing a record under the Partition Act, the rules contained in Part II of the Bengal Survey and Settlement Manual, 1917, the forms prescribed therein, and in the instructions contained in Parts I to IV of the Technical Rules and Instructions of the Settlement Department, 1916, shall, so far as possible, and subject to the following instructions, be followed.

Synopsis of procedure to be prepared.

14. Before commencing the survey and record the Partition Officer shall submit for the sanction of the Collector a synopsis of the procedure which he intends to adopt in accordance with these instructions, specifically referring to any stages which he intends to omit or modify. If a previous survey and record-of-rights exists, he shall ordinarily adopt them under section 49 of the Act, and shall submit for the sanction of the Collector his proposals for verifying and correcting such survey and record.

#### Section II.—Survey.

Proclamation, etc., before survey.

15. The proclamation required before the commencement of the survey shall be in Form 21, Appendix A. At least 10 days before the demarcation of the village boundaries, a notice shall be issued in Form 22, Appendix A, to the proprietors of the estates under partition and of the neighbouring villages informing them of the date of demarcation.

Boundary disputes.

16. Whenever there is a dispute about a boundary, both lines shall be surveyed, demarcated and shown on the map for decision under section 88 of the Partition Act; the provisions of the Survey Act (V of 1873) are not applicable to such disputes.

17. Where the area under partition is extensive, arrangements should be made for a theodolite traverse. In smaller cases one of the other methods laid down in rule 2, Chapter I, Part I, of the Technical Rules and Instructions of the Settlement Department, should be followed. Traverse survey.

18. All maps made in partition cases shall be drawn on paper known as P 70 A obtainable from the Stationery Office. The preparation of maps on inferior paper is not permitted. Paper to be used for maps.

19. Whenever a survey and record-of-rights have previously been prepared for the area under partition, but have not been adopted for the purpose of the partition, the amin must show on the new map in red ink the number assigned to each field at the previous survey. Reference to former surveys.

### Section III.—Record.

20. In preparing the record, under-raiyats will only be entered in the remarks column, unless the Collector specially orders that separate khatiyans should be prepared for them. Record of under-raiyats.

21. The forms of khatiyans and khasras prescribed in the Survey and Settlement Manual, 1917, (Forms 53 and 55), shall ordinarily be used. Forms of abstract for allotment shall be prescribed by the Collector in accordance with the special conditions of the partition. Form of record.

22. Where Kanungos or Inspectors are not employed, the Partition Officer is responsible for the necessary checking of the survey and record. Inspection.

23. The notification before commencing attestation prescribed by section 47 of the Partition Act shall be published in Form 84. Survey and Settlement Manual, 1917. No place shall be fixed for attestation which is at a distance of more than three miles from the village, the records of which are to be attested; the attestation shall follow the procedure laid down in Part IV, Chapter IX, of the Technical Rules and Instructions of the Settlement Department, 1916. Attestation.

24. The publication of the record and the distribution of copies of entries in the record prescribed by section 48 of the Partition Act shall be made *mutatis mutandis* in accordance with rules 61 and 62 of the Government rules under the Bengal Tenancy Act (1914) and Part II Chapter XIV of the Survey and Settlement Manual, 1917. Publication of the record.

25. When the record has been published as prescribed in the preceding Instruction or corrected under Instruction 26 the Partition Officer shall record an order that the map and record have been adopted for the purpose of the partition, and shall proceed under section 50 of the Act. Adoption of record for partition.



## Section IV.—Use of previous survey and record

Acceptance of  
former survey  
and record.

26. Whenever a professional or other trustworthy survey and record-of-rights have been made, they should be utilised under the provisions of section 49. It should be remembered that such surveys and records are presumed to be correct and should be adopted as the basis of partition. The records should, however, be brought up to date by fresh bujharat and attestation, if required, before adoption under section 50 of the Act. The Partition Officer should in such cases make use of the khatiyans, khasra and statistics of the previous record.

Use of settlement  
records.

27. Even where a previous survey and record are not adopted (a) a special, and (b) a general use of the record can be made of the record in partition proceedings:—

- (a) to prevent the rents of raiyats being raised where the holdings fall in two or more estates formed by partition, and
- (b) to extract general information for the general purposes of partition.

Preparation of  
abstract.

28. Where a settlement record is adopted, or the record is prepared on settlement forms, it is necessary to prepare a preliminary abstract by holdings (see Instruction 21.) The following form is suggested:—

## ABSTRACT I.

*Area of the estate under Partition and Rents (cash-paying)  
(separate for each village).*

Manza.	Khasra number under partition (lowest number first, etc.).	Khatiyau number in which khasra number is situated.	Area paying cash rent.	Cash rent paid (to be entered only once for each khatiyau).	Rate of rent.	REMARKS.
1	2	3	4	5	6	7

N.B.—Column 5 divided by column 4 will give the incidence of raiyati rentals in each village, but for valuation purposes it is better to take an incidence deduced from the total rent divided by the total area held by settled and occupancy-raiyats paying cash rents.

(a) The special use of this abstract is to give ready materials for comparison with the raiyats' rents after partition, field rates being cut down so as to give the same aggregate rents after as before partition as far as possible.

(b) For general purposes of partition, the settlement papers show rents by holdings, and it is clearly the intention of the Act that the field rents shall aggregate the holding rents. It is advisable therefore to prepare the following abstract :—

## ABSTRACT II.

*Valuation of produce-paying plots, khamar and uncultivated areas only in the estate under partition.*

MAGHA.	Khasra number under partition.	Khatyan number in which khasra number is situated.	PRODUCE-PAYING AREA.			Khatyan number in which khasra number is situated.
			Area of produce-paying plots.	Valuation (see footnote of Statement I).	Valuation made by Deputy Collector.	
1	2	3	4	5	6	7

  

KHAMAR.			Khatyan number in which khasra number is situated.	UNCULTIVATED.		REMARKS.
Area of serrat.	Valuation (see footnote of Statement I).	Valuation made by Deputy Collector.		Area of uncultivated plots.	Valuation made by Deputy Collector.	
8	9	10	11	12	13	14

29. The total rents in column 5 of Abstract I added to the valuation in columns 6, 10 and 13 of Abstract II, with the addition of *sairat*, will give preliminary knowledge of the way in which assets are grouped under holdings. The proprietors who do not get *khamar* or produce-paying lands will, it is presumed, state their objections before the Partition Officer previous to the filling up of columns 6, 10 and 13 of Abstract II. Where the assets as determined in such a statement as the above cannot be used, either a column 5A in Abstract I may be added—"Incidence of the rent of the holding within which the plot is situated," or a statement may be prepared in the following form :—

Application of abstract.

Khasra number of plots included in the application.	Khasra number of plots on the four boundaries.	OCCUPANCY-RAIYATS CULTIVATING LANDS ON THE BOUNDARIES.				REMARKS.
		Khatyan number.	Area of holding.	Rent of holding.	Rate of rent.	
1	2	3	4	5	6	7

By these means the incidence of the rent of a holding and the incidence of the rates of rents of surrounding holdings are determined. It may be noted that, in estates of which only small areas exist in the village, incidences may be obtained by similar compilation statements from the lands of other estates in the same village. The amin may then go to the field with the zamindars and their raiyats and block out the lands according to the zamindars' rates in his *jamabandi*, encircling those areas paying the same rates with a lead pencil. The Partition Officer will then hold a local inspection and alter the blocks if necessary. He will see how these zamindars' rates compare with the incidences obtained in the manner above described, and determine a rate for each block of the lands of the estate under partition. If sheets are prepared and printed for the Partition Department for all rates applied to areas ranging from '01 to 100, the amin can work out the product of the Partition Officer's rates and the areas of fields. Thus the Partition Officer can see if the product of his rates and the areas correspond at all to the recorded rents of holdings, and he can make adjustments where the error was substantial.

### CHAPTER III.

#### Accounts.

##### Section I.—Registers.

Registers.

30. The following registers and apportionment statements shall be kept :—

#### Registers.

I.—Cash Book of Partition Fees	...	(Form 1, App. A).
II.—Cash Book of Stamp Fees	...	(Form 1, App. A).
III.—Ledger of Partition Fees	...	(Form 2, App. A).
IV.—Ledger of Stamp Fees	...	(Form 3, App. A).
V.—Proprietor's Ledger of Partition Fees	...	(Form 4, App. A).
VI.—Establishment Bill Book	...	(Form 5, App. A).
VII.—Contingent Register	...	(Form 6, App. A).
VIII.—Amin's Bill Book	...	(Form 7, App. A).
IX.—Travelling Allowance Bill Book	...	(Form 8, App. A).

#### Apportionment Statements.

- A.—Of estimated cost and actual expenditure of partition of each estate among the proprietors ... (Form 9, App. A).
- B.—Of partition charges debitable to all estates in proportion to area ... (Form 10, App. A).

## (a) Cash Books.

**31.** In Registers I and II all receipts on account of partition and stamp fees respectively will be entered. The registers should be balanced monthly, and the totals of receipts and disbursements agreed with the treasury accounts. Stamp fees must be accounted for in Register II and not in Register VII.

Registers I and II.

**32.** The amount to the credit of the Partition Fund will be the first entry on the receipt side of Register I each year. At the close of the year the amount remaining at credit of the Fund will be the sum shown after balancing the account for the month of March, less the total for the year of column 9 of Register VI, i.e., the amount payable to Government on account of contribution for leave and pension.

Opening and closing balances of Register I.

**33.** Entries in column 4 should be abbreviated, e.g., Proprietor No. ... of T.N. ...., the number of the proprietor being that used in Apportionment Statement A. Entries in column 14 will only be made against items of expenditure (e.g., amin's fees, travelling allowance, etc.), which are charged specifically against any particular estate. The total of all other items will be charged in the ledger at the close of the year rateably from Apportionment Statement B.

Entries in Register I.

**34.** The Accountant-General does not maintain registers corresponding to Registers I and II, all receipts on account of partition fees and stamp fees being credited to Government, and all charges on account of partitions being debited against Government. It is accordingly only from Registers I and II that the amount at credit of the partition fund available for payment of stamp duty can be ascertained.

Importance of Registers I and II.

## (b) Ledger of Partition Fees.

**35.** In Register III a separate account will be kept of partition fees of each estate, showing the estimated and actual receipts and expenditure. The estimate will be prepared in accordance with instructions 67 to 74. In addition to the account for each estate an extra account will be opened showing the demands and realisations of amounts, which are not included in the ordinary costs of partition, but are specially levied from particular persons and proprietors, e.g., costs of local enquiries made before the admission of an application for partition under section 29, and of those made under section 39 of the Act.

Register III.

**36.** The balances of all the accounts in Register III, including the extra account referred to in the preceding instructions, should be brought together at the end of the year and the total agreed with the closing balance of Register I. The Register should also be totalled quarterly.

Balancing of Register III.

Closing of  
Register III.

**37.** The last entry each year on the disbursement side of Register III will be the amount debitable to each estate according to Apportionment Statement B. After the close of the operations there should be added to the total expenditure shown by this register, the value of court-fees which have been paid by the parties, but which have to be included in the cost of partition, and the total thus obtained will be charged, according to Apportionment Statement A, against the various proprietors in Register V.

Annual Abstract  
of Register III.

**38.** After the accounts of a year are finally closed, the receipts and payments of each estate for the year in Register III should be totalled and abstracted in Form 11, Appendix A. The totals of this abstract should be agreed with the totals of Register I and the figures communicated by the Accountant-General, and the balance worked out from this account should be reconciled with that shown in Register I. A certificate to the effect that this has been done should be appended to this abstract, which should be submitted to the Collector by the 15th of April each year.

Return XXVII  
to be based on  
Register III.

**39.** After the charges on account of establishment and contingencies of the Commissioner's and Collector's offices have been apportioned among the estates under partition and posted in Register III, and the balances of all the accounts agreed with the closing balance of Register I according to Instruction 38, the totals of the ledger balances should then be entered in Return XXVII (Form 12, Appendix A) for submission to the Commissioner by the end of May. To enable the Board to check the receipts of Partition fees in each district with the Accountant-General's figures of partition receipts, the Commissioner will forward the Return to the Board by the 7th of June each year, with such remarks as he may deem necessary.

(c) Ledger of Stamp Fees.

Register IV.

**40.** In Register IV will be entered particulars of receipts and disbursements of stamp fees separately for each estate.

Purchase of  
stamps.

**41.** Charges for the purchase of stamps for partition deeds should be drawn in the Accountant-General Bengal's fully vouched contingent bill (Form 310). To ensure their entry in Registers II and IV and to avoid confusion with other contingent bills (Register VII), a separate series of numbers should be given to the bills, on which the cost of such stamps is drawn.

Assessment of  
stamp duty.

**42.** The sum necessary for the purchase of stamped paper on which to execute the partition deed shall be assessed on each party and shall be intimated by the Partition Officer to all proprietors simultaneously with the submission of the partition under section 58 of the Act for the sanction of the Collector. In cases in which any

material alteration takes place, the assessment should be adjusted. The cost of stamps to be affixed to the Partition paper, leviable under Article 45, Schedule I of the Stamp Act, II of 1899, does not form part of the cost of partition as contemplated in sections 37 and 38 but must be levied from the different proprietors of the shares created by partition in proportion to the value of their shares.

43. When the final order confirming a partition has been passed by a Commissioner under sections 91 or 92, and communicated to the Collector and after the stamp duty has been collected from the proprietors, the Collector shall cause the order to be written on properly stamped sheets for the Commissioner's signature. If the order be set aside by the Board and important amendments become necessary, a fresh partition paper may be executed, and on application of the parties concerned, the stamp duty paid on the old one will be refunded. The Collector has no legal power to collect the stamp duty payable, until the final orders has been passed under section 91 or 92.

Stamped paper  
to be used.

44. The stamp duty leviable on partition deeds will be calculated on the market value of the separate share or shares which may ordinarily be determined at twenty times the net annual income of the separated share or shares. This should be calculated after deducting the Government revenue, and making an allowance of 10 per cent. for collection expenses and 3 per cent. for the proprietor's share of cesses.

Calculation of  
stamp duty.

45. Separate engagements for the payment of land revenue entered into under section 94 of the Act by the proprietors of the separate estates formed by partition, are exempt from stamp duty.

Engagement  
under section 94  
exempt from  
stamp duty.

46. The Collector shall not give possession of separate estates to proprietors, nor cause notices to be issued under section 94 of the Act, until the entire stamp duty has been realised.

Stamp duty to be  
realised before  
possession  
given.

(d) Proprietor's Ledger.

47. This register will show the demand estimated against and realizations from each proprietor on account of partition fees, a separate page being assigned to each proprietor to whom a separate number is given in Apportionment Statement A. When the Partition proceedings are complete, column 5 will be totalled and the total compared with the share of the proprietor in the actual expenditure incurred according to Apportionment Statement A, to ascertain what amount is still due from him or the amount paid by him in excess.

Register V.

(e) Establishment Bill Book and Contingent Registers.

48. These registers will show the sums which are to be charged at the close of each year rateably against all the estates which have been under partition during the

Registers VI and  
VII.

year. The salary and pensionary contributions of the Partition Officer as well as of those of his establishment should be shown in Register VI.

(f) Amin's Bill Book.

Register VIII.

49. This register will show all work done by and payments on account of amins and of any special establishment employed for any particular estate and to be charged only against that estate, month by month. Applications for payment should be made in Form 49, Survey and Settlement Manual, 1917, which will show the total work done by each amin each month. These forms which also serve as a diary should be kept on a guard file.

(g) Travelling Allowance Bill Book.

Register IX.

50. Register IX will show expenditure on travelling allowance and the amount to be charged against each estate.

(h) Proprietor's Apportionment Statement.

Apportionment Statement A.

51. This statement shall be kept in Form 9 (Appendix A); a separate number should be assigned to each proprietor or set of proprietors, to which a separate allotment is to be made. The charge against each proprietor will be in proportion to the proprietor's share in the estate.

(i) Apportionment Statement of Estates.

Apportionment Statement B.

52. This statement shall be kept in Form 10 (Appendix A). The entries in column 2 on account of estates which have, during the year, been under partition for not more than 6 months should be in red ink, and only half the actual area should be entered. In column 3 the entry against each estate will be

$$\frac{\text{Area shown against each estate in column 2}}{\text{Total of column 2}} \times \text{Grand Total.}$$

(j) Preservation of Accounts Registers and Forms.

Preservation of Registers.

53. Registers I and II and Apportionment Statements A and B (which should be bound as registers) should be preserved permanently, Registers III, IV and V for 12 years, and Registers VI, VII, VIII and IX for 3 years. Chalangas by which payment of partition fees is made by proprietors should be preserved for 12 years, or for 3 years after the adjustment of the accounts of an estate under section 40, whichever period be shorter.

Completion of Registers.

54. Before subsidiary registers and chalangas are sent to the record room, the Partition Officer must see that Registers III, IV and V and Apportionment Statements A and B are fully written up.

**Section II.—General Accounts Instructions.**

**55.** An accounts record, separate from, but concurrent with, the case record shall be maintained for each estate, from the preparation of the estimate under section 37 up to the final adjustment of the accounts of the estate under section 40, and containing all supplementary estimates, lists and notices of demand, and showing all steps taken for recovery or refund up to final adjustment. An order-sheet shall be attached to each such accounts record, and shall contain every order relating to the accounts of the estate.

Accounts Record.

**56.** All payment vouchers should be serially numbered for the year according to the dates of payment and filed together in a guard book instead of each kind separately (salary, travelling allowance, contingencies etc.)

Payment vouchers.

**57.** Early in April each year the Commissioner will prepare an account of the actual expenditure on partition establishment and contingencies during the past financial year, and apportion it among the several districts in his division. He will communicate these figures to the District Officers concerned for insertion in their Partition Fund Accounts and abstract annual statements of Partition Fund, with a note that the amount was drawn by him direct from the Treasury.

Apportionment of costs in Commissioner's office.

**58.** The abstract of the Estates Partition Fund required by section 42 (6) should be prepared from Return XXVII and should be submitted to the Commissioner for transmission to the Board in Form 13 (Appendix A). It shall be accompanied by an explanation sheet showing, in addition to such comments as the Collector and Commissioner think necessary,—

Abstract of Estates Partition Fund.

- (a) The total balances of partition fees outstanding from the estates under partition in the district.
- (b) The portion of the balance shown which will have to be disbursed on estates of which partition has not been completed.
- (c) The portion of the balance which is to be refunded to the proprietors under section 40.

**Section III.—Accounts of Process Fees.**

**59.** Process fees in partition cases, other than fees specially levied from particular parties under sections 38 and 39 of the Act should be included in the estimate of costs, and the necessary court-fee stamps on account of processes should be purchased quarterly and attached to the record (*vide* rule 182, page 78, Practice and Procedure Manual, 1918). Except when special recoveries are made from parties under sections 38 and 39 separate realisation should not be made on account of such fees, but the expenditure incurred should be entered quarterly in Registers I and III and adjusted as part of the cost of partition.

Accounts of process fees.



Statement of  
process fees.

**60.** A statement of process fees should be kept concurrently with the order sheet of each case in the form below:—

Case No.	Year	Name of Estates
1. Serial number ...	4. Number in process register	
2. Date of issue of process	5. Amount of process fees ...	
3. Nature of process ...	6. Remarks ...	

The statement should be filled in as soon as any process is issued, and the serial number of the entry in the statement should be entered in the remarks column of the order-sheet where order for issue of the process is recorded.

#### Section IV.—Budget and Sanction of Expenditure.

Extra budget  
provisions.

**61.** The Commissioner is competent to sanction extra budget grants provided the increased expenditure is covered by a corresponding increase in the fee receipts. The power may also be exercised when no provision has been made at the beginning of the year, and in such cases supplementary estimates should be prepared by Collectors and submitted to the Commissioner for sanction and transmission to the Accountant-General, Bengal. The estimated receipts should, as usual, be deducted at the foot of the estimate.

Contingencies in  
Commissioner's  
office.

**62.** Commissioners are competent to sanction contingent charges of the Partition Department incurred in their own offices. Such charges should be drawn on a separate bill, and included in the annual account sent to District Officers under Instruction 90.

Cost of survey  
instruments.

**63.** Commissioners are competent to countersign indentments for mathematical survey instruments required for the use of the Partition Departments of Collectors' offices and to sanction the expenditure incurred on the purchase of such instruments.

Cost of forms  
and notices.

**64.** The notices and forms prescribed in Appendix A should be issued in manuscript or printed at local presses. Collectors are authorised to incur such expenditure and apportion it amongst all the estates under partition. Where standard survey and settlement forms issued by the Press and Forms Manager, Bengal, are used, the cost thereof should be similarly apportioned.

Receipts and  
expenditure for  
purchase of  
stamps.

**65.** The estimated receipts for the purchase of stamps for partition deeds should be included under the head "Partition fees realised" in the budget estimates of disbursements under—"3—Land Revenue—Charges of District Administration—Partition Establishment," and the anticipated expenditure on that account should be shown under the head "Contingencies—Office Expenses and Miscellaneous" in the above budget.

66. The estimated recoveries on account of the cost of partitions should be shown under the head "Partition fees realised" in the budget estimate, and the amount should thereafter be deducted from the total charge to show a net total, as required by footnote A to the budget.

Estimate of recoveries.

#### Section V.—Preparation of Estimates.

67. Estimates under section 37 shall be prepared in Form 14, Appendix A, and shall be submitted to the Collector for sanction. They should be full and should be prepared with great care so as to avoid, if possible, the necessity for supplementary estimates.

Preparation of estimates.

68. The area of the estate, its compactness, or the reverse, the number of proprietors and of separate estates to be formed and other difficulties should be taken into consideration.

Area, etc., to be considered.

69. The number of months or years likely to be taken in completing the case and for which a special field establishment will be required for measurement and preparation of records should be carefully estimated.

Duration.

70. In estimating the probable cost for establishments and contingencies, regard should be had to the actual charges incurred for similar estates in previous years.

Establishment and contingencies.

71. For every estate brought under partition in a district, an estimate shall be prepared under section 37 whether in the district concerned an Estates Partition Fund exists or not. The charges on account of partitions shall be levied according to the estimate in each case as provided in sections 37 and 38, subject to final adjustment under section 40. The adoption of the procedure prescribed in section 42 (2) requires the previous sanction of the Board.

Estimates required in all cases, whether Partition Fund exists or not.

72. All such charges should be credited under "Land Revenue," not as receipts, but by way of deduction from the charges under the sub-head "Partition Establishment," subordinate to "3—Land Revenue".

Crediting of charges.

73. The preliminary statements of estimated costs should be filed in a guard book in serial order as in Apportionment Statement A.

Filing of estimates.

74. As soon as the estimate has been approved, the total amount of the estimate should be entered in Register III; apportionment of estimated amounts should also be made against each proprietor, or group of proprietors registered in Register D, in proportion to their shares; and the separate demand apportioned should at once be entered in Register V.

Entry of amount of estimate in ledgers.

#### Section VI.—Distribution of charges.

75. Distribution among proprietors of the estimated cost should be made on the following principles:—

Distribution among proprietors of estimated cost.

(a) Where there is only one mauza in the mahal, or when there is more than one mauza, but there is

mahalwar registration in Register D, the distribution will be made according to the shares of the proprietors or groups of proprietors in the estate as a whole, as recorded in Register D.

(b) When there is separate mauzawar registration and the different mauzas have separately recognised existent revenue demands distribution of estimated demand for costs will be made according to the shares of the recorded proprietors in each mauza.

(c) In other cases, the distribution of the estimated cost will be made on the basis of the Government revenue actually paid by each proprietor or group of proprietors recorded in Register D. When separate accounts do not sufficiently show the revenue paid by each proprietor or group of proprietors recorded in Register D, the Deputy Collector must draw up his list of demands in consultation with all proprietors concerned.

Notice to  
proprietors of  
estimated  
cost.

**76.** After the estimated demand for costs has been distributed against proprietors, a notice in Form 23, Appendix A, shall be issued to each proprietor or his manager or agent, informing him of the sum to be paid by him as his share of the estimated cost of partition and the instalments in which it is to be paid.

Apportionment  
of general  
charges.

**77. (a)** At the close of each year the amount actually disbursed during the year on account of the establishment employed under section 36, of the salary of any Deputy Collector employed under section 41 and of general contingent charges, and any amount payable to Government on account of pension and leave allowance shall be charged rateably in proportion to area against all the estates under partition during the year.

(b) An estate shall ordinarily be considered to be under partition until possession is given under section 94, and the general costs shall be leviable only up to the date of giving such possession. If possession is given within the first three months of a year, nothing shall be charged on account of general costs for this period. If it is given within from three to six months from the commencement of the year the estate shall be charged with a sum equal to half its share of the general costs for the previous year. If possession is given after six months from the commencement of the year, the estate shall be charged, at the discretion of the Collector either with a sum equal to its share of the general costs for the previous year, or with its share of the general costs for the year as ascertained after its close.

(c) The cost of inspecting and other superior officers employed by the Deputy Collector under section 35 may be distributed among the several estates for whose benefit they are employed in proportion to the area of each which has been declared to be under partition under section 29 :

Proportional  
debit of  
certain  
costs to  
estates.

Provided that in exceptional cases in which the area of the estate declared to be under partition is not known even approximately, the distribution of such cost shall be in proportion to their most recent valuation for the purpose of the assessment of road and public works cesses.

78. Any special proceedings as to cost under sections 38 and 39 should be reported to the Commissioner of the division, and should be specially mentioned in the final report of the partition.

Special  
proceedings  
as to costs.

#### Section VII.—Adjustment of Accounts.

79. Special attention should be paid to the requirements of section 40 (1) of the Act and as soon as a partition is completed, the Collector shall record an explicit order declaring the total cost thereof, as directed by the law.

Declaration  
of cost and  
adjustment.

80. As soon as the accounts are finally adjusted under section 40, any party entitled to a refund should be informed by postcard notice of the surplus amount to his credit and asked to apply for payment. Information should also be given to the party's Revenue Agent, and the fact that notice has been given to the Revenue Agent and by postcard should be noted in Register V. If no application be made within one month after the issue of such notice, another postcard notice should be sent; or under the special order of the Deputy Collector in charge and when there is no sufficient objection to remittance to an individual proprietor, the excess amount should be remitted by postal money order after deducting the money order commission.

Refund to  
proprietors  
of excess  
sums paid for  
cost of  
partitions.

81. If after six months it is found impossible to refund the surplus amounts, the account of the estate shall, under the Collector's orders, be closed. A list shall be made of all excess recoveries which have not been refunded and the total amount of these shall be deducted from the cash-book balance at the end of the year. If subsequently an application is made and allowed for a refund from such a closed account, the refund will be made with reference to this list of excess recoveries and a note of payment will be made thereon. All entries in Register I on account of payments for refund from closed estates shall be made in red ink to prevent confusion when Register III is checked with Register I.

Procedure to  
be followed  
when surplus  
amounts cannot  
be refunded.

**Section VIII.—Audit of Accounts.**

**Audit of the accounts of Estates Partition Fund by the Examiner of Local Accounts. Examiner's note and report thereon.**

**82.** The Butwara accounts of estates in all districts where an Estates Partition Fund has been formed will be audited by the Examiner of Local Accounts once a year.

**83.** One copy of the Examiner's note will be sent by the Accountant-General, Bengal, direct to the Deputy or Sub-Deputy Collector in charge, the Collector, the Commissioner and the Board. Should any matter in the note need a report from the local authorities, such report will be submitted in quadruplicate by the Deputy or Sub-Deputy Collector through the Collector, Commissioner, and Accountant-General to the Board. The report itself is to be divided into five columns—Column 1, containing the substance of the paragraph of the Examiner's note; column 2, Deputy or Sub-Deputy Collector's explanation; column 3, Collector's remarks; column 4, Commissioner's remarks; and column 5, Accountant-General's remarks.

**Audit by the Treasury Officer in districts in which there is no Partition Fund.**

**84.** In districts in which there is no Partition Fund, in addition to the ordinary check at present exercised by the Deputy Collector in charge of partitions, the accounts are to be audited by the Treasury Officer of the district once a year. The following points should be especially looked into:—

- (a) whether the costs leviable under section 37 are regularly realised;
- (b) whether the amount due to Government, such as pensionary contribution, income-tax, etc., is duly credited to Government;
- (c) whether the sums refundable to the proprietors under section 40 are refunded; and
- (d) whether the account books prescribed by the Board are properly kept up.

**Certificate to be furnished by the Treasury Officer, and his report on the audit.**

**85.** When the audit has been completed, the Treasury Officer will draw up and submit to the Collector a report giving the date and the results of the audit with special reference to the points mentioned above. To this report the Treasury Officer is to attach a certificate to the effect that he has thoroughly examined and checked account registers, and that all the discrepancies (exceptions to be specifically mentioned) have been reconciled.

This report and certificate the Collector will forward with such remarks of his own as he may think fit to the Commissioner for orders.

**The results of audit by the Treasury Officer to be mentioned in the Land Revenue Administration Report.**

**86.** The results of such periodical audits by the Treasury Officer should be specially mentioned in the Annual Land Revenue Administration Report, in the section relating to partition.

## CHAPTER IV.

## Establishment.

**87.** Establishments of a fixed nature (i.e., that will be required for a term exceeding 12 months) require the sanction of the Commissioner. Temporary establishment may be sanctioned by the Collector within the limits of the estimate prepared under section 37 of the Act. Sanction of establishments.

**88.** Appointments to posts on duly sanctioned fixed establishments shall be made— Sanction of appointments.

- (a) on pay of Rs. 100 or less by Deputy Collectors subject to the approval of the Collector,
- (b) above Rs. 100 and not more than Rs. 200 by Commissioners,
- (c) above Rs. 200 by the Board with the sanction of Government.

**89.** Officers transferred to the Partition Department from a permanent Government establishment, in which they were holding substantive appointments, and officers belonging to permanent establishments paid from Estates Partition Funds constituted under section 42 of the Act fall under foreign service of the second kind (C. S. R., Art. 750) and are entitled to pension; contributions for their leave and pensions are leviable under the provisions of the Civil Service Regulations and should be recovered by the Partition Department from the proprietors of estates from time to time under partition and not from the officers themselves. All other establishments in the Partition Department are temporary and no contribution for leave or pension should be levied on their behalf. Permanent posts under the Partition Department.

**90.** In order to determine what establishment is necessary for partition work in the Commissioner's office, the Collector shall at the beginning of each year submit to the Commissioner a statement showing the number and area of the estates under partition. The Commissioner will then determine the strength of establishment required and distribute the cost thereof rateably among the districts in proportion to the area under partition. Establishment in Commissioner's office.

**91.** The amount and method of taking security from subordinates employed in the Partition Department shall, so far as practicable, be regulated by the rules in Chapter V, Board's Miscellaneous Rules, 1918. Security from employees.

**92.** If a Deputy Collector, while employed on partition work, is promoted to, or confirmed in an appointment of which the pay is higher than that of a Deputy Collector of the lowest grade, the excess over the pay of a Deputy Collector of the lowest grade shall, if he be retained on Partition work, be paid by Government, and cannot be debited against the cost of partition. Excess pay of Deputy Collectors.

Appointments of  
Sub-Deputy  
Collectors.

Travelling  
allowance of  
Sub-Deputy  
Collectors.

Supervision by  
Partition  
Officers.

Scale of esta-  
blishments for  
survey and  
record.

Payment of  
amins.

Check required  
before full  
payment.

**93.** Sub-Deputy Collectors in receipt of pay of Rs. 200 or less per month, when employed exclusively on partition work as special Batwara officers, shall receive a special allowance of Rs. 50 per month.

**94.** Sub-Deputy Collectors, when employed exclusively on partition work as special Batwara officers should draw the same travelling allowance as Deputy Collectors of the lowest grade, i.e., a daily allowance of Rs. 3 or mileage of 4 annas.

**95.** Partition officers should supervise the progress of the work of their subordinates by requiring the submission of progress reports in Form 15, Appendix A.

**96.** In appointing establishments under section 35 of the Act, a sufficient staff should ordinarily be appointed to complete the survey and record within a period not exceeding 12 months. If this period be not sufficient the establishment to be appointed shall be subject to the sanction of the Commissioner. The scale of staff required and the rates payable should be based on the "Sample Programme and Estimate in a small Operation" given in Appendix T, page 220 of the Survey and Settlement Manual, 1917. For convenience of reference the following figures are given for a standard area of 10 square miles:—

(1) *Kanungo or Inspector* with 2 chainmen for inspecting survey, and 2 amins for bujharat (if done), 10 amins for survey and khanapuri: outturn 450 acres each per month: contract rate Rs. 10 per 100 acres (inclusive of amin's staff), khanapuri outturn 70-80 plots each per day; inclusive rate Rs. 2 per 100 plots bujharat outturn by Kanungo or Inspector 100 plots per day. Attestation outturn 100 khatiyans per day; staff 1 peshkar and 2 muharrihs.

For area extraction and khasra section see also Part III, Technical Rules and Instructions of the Settlement Department, 1916.

**97.** Amins will ordinarily be paid at the contract rates specified in the previous rule; in the case of very petty estates, however, which would occupy a single amin less than 1 month, the Collector may, at his discretion, allow the amin a fee of Re. 1 per day, inclusive of the time required for going to and from the estate, but exclusive of the cost of the amin's staff. For miscellaneous work such as enquiries into objections, demarcation, etc., amins should be paid at the same rate.

**98.** An amin should not be paid his full remuneration until his papers have been examined and passed as correct, which should be done without any delay. The officer in charge of the partition should see that the amin is not permitted to remain on the estate without reason, or make unnecessary delay in filing his papers. Advances not exceeding two-thirds of the remuneration earned may be

given from time to time at the discretion of the officer in charge.

99. Before an amin is deputed to any work, the Partition Officer shall prescribe the period within which each stage is to be completed with regard to the rate of progress laid down in Instruction 96 above and the Technical Rules and Instructions of the Settlement Department, 1916.

Programme  
to be laid down.

100. A register of amins qualified for employment in partition work shall be maintained in every district (Register 2 A, Register and Return Manual) (Form 18, Appendix A). The register should be revised periodically, and names of inefficient or otherwise undesirable amins should be struck out. When new appointments are made, amins should be selected from candidates holding certificates from a recognised survey school, or from the Settlement Officer of a major settlement party. The appointment of any other amin requires the sanction of the Commissioner.

Qualifications  
of amins.

101. In extensive partitions kanungos should be borrowed from the Settlement Department to inspect the survey and record writing and to do bujharat (if done). In smaller partitions, where the Partition Officer is unable to inspect sufficiently himself, inspectors should be appointed. No one should be appointed as an inspector, unless the Collector is satisfied that he has had practical experience of survey and that he is fully qualified for the work.

Qualifications of  
inspecting staff.

## CHAPTER V.

### Inspection Questions.

102. The following questions are prescribed for the use of officers inspecting the Batwara Department of a Collector's Office :—

#### I.—Case Work.

(i) What is the total number of estates pending for partition in the district?

(ii) (a) Examine from Register 2 the progress made in all estates pending for partition; where the delay between any two stages appears to be excessive, the reason for delay should be stated.

(b) What disposed of cases still remain on the file and for what reason?

iii) Give details of the area under partition in the following form, distinguishing between—

(1) estates in which surveys and record have been made *de novo* under sections 45 to 48 of the Act,

(2) estates in which maps and records-of-rights finally published under Chapter X of the Bengal Tenancy Act have been accepted under section 49 of the Act.



(3) estates in which a new survey and record-of-rights have been made by the Partition Deputy Collector under powers vested in him by section 44 of the Act.

Serial No.	Estate No.	Total area.	Area in which the survey and record of existing rents had been completed.	Area in which the survey and record of existing rents is still to be completed.	REMARKS.

(iv) (a) Is there any Deputy Collector specially appointed for this work (section 41)?

(b) If not, how has the work been distributed?

(v) How many days has the Deputy Collector spent in camp in connection with Batwara work during the current year?

(vi) (a) Does the Deputy Collector personally check the work of the amins in survey and record-writing as required in Instructions 22 and 101?

(b) Does he make local inspection and satisfy himself about the general accuracy of the survey and record-writing undertaken by the Partition Department?

(c) Could more of the work be done with advantage away from headquarters?

(d) Does the Deputy Collector himself dispose of objections?

(e) Is any other officer, other than an Inspector, appointed under the Deputy Collector, to supervise the preparation of preliminary records and decide objections? Does the Deputy Collector properly supervise the work of such officer?

(f) In case of acceptance of papers of any previous survey and settlement whether prepared in connection with district settlement or any petty settlement under the Bengal Tenancy Act, does the Deputy Collector satisfy himself by personal local enquiries about the correctness and accuracy of such papers before adoption under section 50 of the Act for the purposes of partition?

(vii) Are maps prepared on paper known as P. 70A as required by Instruction 18? Are they properly coloured, and properly marked, signed and dated, so as clearly to indicate their authority and their connection with reports or orders in the records?

(viii) Does the Deputy Collector possess sufficient local knowledge of the estate lands under partition in order to be able to certify that, by the partition effected by him, public revenue would not be endangered?

(ix) (a) Does the Deputy Collector keep a case diary himself? Is it in order?

(b) Does the Deputy Collector fix dates in each case by which proceedings at each stage should be completed?

(x) How many cases have been completed during the year, how many are pending and how many newly instituted?

(xi) Are there any old cases pending? If so, state the year in which they commenced, the stage at which they have arrived and the reasons for delay?

(xii) Are instructions regarding appointment and payment of Batwara amins employed in survey and other works connected with partition strictly followed? Is the Register of Batwara amins prescribed by instruction 100 properly kept up and properly revised from time to time?

(xiii) How many amins or muharrirs are being employed in the Partition Department—

(a) For survey and measurement work?

(b) For other works connected with partition?

(xiv) What are their qualifications and at what rate are they being paid?

(xv) In the case of contract amins—

(a) What is their average monthly earning?

(b) Does it exceed the scale laid down in the Technical Instructions of the Settlement Department?

(c) Are the rates of contract work in accordance with the rates laid down in Instruction 96?

(xvi) In case of amins paid at a fixed monthly rate, does the Deputy Collector carefully check the diaries of amins and satisfy himself that amins turn out work consistent with their pay? Is any standard outturn of survey laid down; if so, what is it?

## II.—Accounts.

(xvii) Has an Estates Partition Fund been opened (section 42)? If so, what is its financial position, giving details for the whole amount, estate by estate?

(xviii) When was the Estates Partition Fund (if any) last audited? Are the audit directions being strictly carried out and have all irregularities noticed by the auditor been remedied?

(xix) If no Estates Partition Fund exist, has there been any test or audit of the Batwara accounts? If so, have all irregularities been remedied, and are the accounts in a satisfactory state?

(xx) (a) Are the Partition Fees Ledger, Stamp Fees Ledger and Proprietors' Ledger of Partition fees indexed carefully and totals struck quarterly and annually and entered in red ink?

(b) What steps are taken to secure the speedy realization of demands?

(c) Are the Accounts Registers prescribed in Instruction 30 properly maintained according to the instruction? And are they thoroughly examined monthly by the head clerk and Deputy Collector?

(d) Is the amins' bill book kept up to date and signed by the Deputy Collector? Are Instructions 49, 97 and 98 strictly followed in regard to the payment of remuneration to amins?

(e) Are the accounts record and accounts order sheet prescribed in Instruction 55 properly maintained?

(xxi) Does the Deputy Collector see that changes in Register D concerning estates under partition, which are ascertained from the Record-keeper under the instruction contained in Instruction 10 are promptly noted in the partition record and in the Proprietors' Ledger and Apportionment Statement No A.?

(xxii) (a) Are the following registers also kept in the Batwara Department, besides those prescribed in the Batwara Manual?

Register 8—(Miscellaneous cases).

Register 9—(Certificate Requisition).

Register 11—(Process of all departments made over to Nazir for service).

Register 27—(Register of Petitions).

Register 37—(Fines).

Register 58—(Court-fee Register).

Register 70—(Witnesses).

(b) Are they properly kept?

(xxiii) (a) Are there any sums still due by, or refundable to, proprietors under section 40? If so, state the action taken to comply with the requirements of that section and Board's Instructions 80 and 81.

(b) Does any delay occur in the final adjustment of accounts under section 40, the formal order required by the Collector and the declaration of cost per acre? Is necessary action taken promptly after adjustment?

(c) What step is taken when a proprietor dies after the completion of partition and the amount due to him exceeds Rs. 100 and his heirs do not take any steps to take the amount by producing succession certificates?

(d) What step is taken when proprietors do not come forward to apply for refund after due notices?

(xxiv) (a) Does the Deputy Collector personally scrutinize the contingent expenses and satisfy himself that only necessary expenditure is incurred?

(b) Does the Deputy Collector verify the cash in the permanent advance monthly, if any separate advance is granted for the Partition Department, with the Permanent Advance Register?

(xxv) Are there any cases, the disposal of which has been delayed owing to the non-realization or partial payment of the stamp duty chargeable on partition deeds?

(xxvi) (a) Is the estimate of cost prepared in accordance with the instructions given in Section V, Chapter III, Part III?

(b) Has the expenditure exceeded the estimate in any case? Was the excess justified?

(c) Have any steps been taken to keep the expenditure within the estimate?

(xxvii) Is any amount drawn from the Treasury and not paid to the person to whom it is due on the day on which it is drawn? If so, who keeps it and under what authority?

(xxviii) Are all vouchers of actual payees of over Rs. 10 taken and kept with the bills and payment orders cancelled?

### III.—Inspection.

(xxix) When was the Batwara office last inspected, by whom and in what state was it found?

(xxx) Have the defects, if any, brought to light in that inspection, been rectified?

### IV.—Miscellaneous.

(xxxi) After applications for partition are received, is the Record-Keeper's report taken to see whether the applicant's name is entered in Register A of the Land Registration Department for the share for which he claims partition and both the Record-Keeper's and the partition peshkar's reports taken as to whether there is any objection to the application for partition under sections 11 and 14 of the Act, as detailed in Circular 7 of 1893?

(xxxii) Are partition slips sent to the Record-Keeper and the Deputy Collector in charge of the Tauzi and Road Cess Departments in accordance with the Board's Resolution of 29th July 1897, and duly acknowledged?

(xxxiii) (a) Have partition statements been engrossed on stamped paper of the requisite value?

(b) To what extent are separate agreements taken from the proprietors of separate estates formed as required by section 94 (1) (b)? Are they taken in the prescribed form?

(c) Are they specifically deposited in the Record Room as documents of value with the Record-Keeper?

(xxxiv) (a) Does the Partition Head Clerk or Peshkar certify to the classification of the papers?

(b) Are papers of disposed-of cases promptly deposited in the Record Room as required in the Records Manual after proper classification?

(xxxv) (a) Has any partition been stayed at the request of parties?

(b) If so, have the expenses incurred been realized?

(xxxvi) Have any partition cases been struck off the file by the Commissioner under section 34? If so, have the costs been recovered?

(xxxvii) Are weekly progress reports of work done by the officers employed under the Deputy Collector punctually submitted?

(xxxviii) Are boundary marks fixed as required by section 96 of the Act or under the Bengal Survey Act (Act V of 1875) during the progress of survey and preparation of records?

(xxxix) Has any fine been imposed under section 107? If so is it entered in Register 37? What sum has been realized? What proceedings are being taken for the realisation of the balance?

(xl) Is a statement, showing the areas and number of the separate blocks in each of the newly-formed estates submitted with each case to the Commissioner for confirmation?

(xli) Are the order sheets in batwara cases kept in English and every order recorded by the Deputy Collector with his own hand or dictated and signed by him? Is the separate account order sheet maintained *pari passu* with the main order sheet?

(xlii) Is the actual date to which each case is adjourned clearly specified in the adjournment order and the case put up on such date for further orders?

(xliii) Has any partition been effected by amicable settlement or by arbitration as contemplated in sections 51-56 of the Act?

(xliv) Has the Deputy Collector satisfied himself by personal local enquiry that the determination of assets in such cases has been accurate and complete so as to secure the payment of land revenue by such partition?

(xlv) Does the Deputy Collector take steps to enforce the attendance of parties and their agents under the powers vested in him under the Civil Procedure Code in section 97 of the Act and exercise the special powers conferred by section 107 of the Act?

(xlvi) In how many cases has partition been stayed at the instance of the Civil Court under section 24 of the Act?

(xlvii) (a) In estates subject to fluvial action what precautions are taken to exclude from the partition proceedings areas that are liable to assessment of land revenue?

(b) In this respect does the Deputy Collector thoroughly understand the application of Act IX of 1847 and does he personally compare the thakbast and revenue maps or maps on which the settlement was based?

(xlviii) (a) Has the thak or revenue survey been compared with the records adopted for purpose of partition?

(b) If any discrepancy is found in area, what is the percentage of difference and the reason for the increase or the decrease?

(xlix) In the separation of common lands of two or more estates under section 84 of the Act, is the thak area into consideration for partition purposes where separate taken possession by the different estates is found in lands recorded as *ejmali* in the thak survey?

## PART IV.

### Rulings of the Board of Revenue and the High Courts.

In order to facilitate the work of partition officers, the following rulings applicable to partition work have been collected :—

#### ACT V (B.C.) OF 1897.

##### Section 4.

1. *Board's No. 70, dated 20th February 1890.*—The 16-annas proprietor of an estate cannot apply for partition of an estate into two or more portions. All the provisions of the Act regarding the apportionment of Government revenue, etc., show clearly that no estate can be subject of partition, unless it has at least two proprietors. Right to partition of a single proprietor.
  2. *Board's No. 92A, dated 1st March 1894.*—If an estate is under management of a Common Manager appointed under section 93 of the Bengal Tenancy Act (VIII of 1885), a co-sharer, if he be not a registered proprietor, is not entitled to apply for partition of his share in such estate. Right to partition where there is a Common Manager.
  3. *I. L. R. XX Calc., p. 379 Mukunda Lal Pal and another versus I. Leheraux and others.*—Joint possession alone is not a sufficient ground for compelling a partition. In order that persons may be co-parceners and so have a right to partition, not only must they be in joint possession, but that joint possession must be founded on the same title. Joint possession must be based on title.
- (A subordinate tenureholder has no right of partition as against his superior landlord).
4. *Board's Proceedings of 15th January 1887, No. 106, Collection 7, file 4.—Cf. section 8, Act VIII (B.C.) of 1876.*—The Partition Act clearly contemplates more than the mere record of the fact of possession on the part of an applicant for partition. He must be in actual possession of the interest in respect of which he is so recorded. If the fact of registration in the Collector's books were by itself to be accepted as sufficient evidence of possession to entitle an applicant to claim partition, it would have been unnecessary for the law to declare, as it does, that partition may be claimed by a recorded proprietor who is in actual possession of the interest in respect of which he is so recorded. Possession must be of recorded interest.

Partition may be based on delivery of possession by Civil Court.

**5. Board's Proceedings, Collection No. 7, file 69 of 1904, serial 5.**—A purchased the fractional interest of B, the recorded proprietor of an estate, at a sale for execution of decree and was given possession by the Civil Court in the usual way and got his name registered without objection under the Land Registration Act. An application was made by A for the partition of his share under Act V (B.C.) of 1897. B opposed it urging that though A bought his share and though he got his name registered without objection, yet he (A) was not entitled to partition, because he was not in *actual* possession as required by section 4, Act V (B.C.) of 1897.

The case having come before the Board, they observed that they were satisfied that A had obtained possession by virtue, and in execution of a Civil decree, that he had been in actual possession of the share sought to be partitioned, and that B had been doing his utmost to keep A out of possession. The Board were, therefore, not prepared to admit that section 4 of the Batwara Act can be taken advantage of in support of barefaced wrong-doing and lawlessness and directed that the partition should proceed.

Possession : distinction between section 4 and section 5.

**6. Board's appeal No. 5 of 1903 (Eastern Bengal and Assam).**—Between partition under section 4 and separation under section 6 there is the wide distinction that, while under the former section there can be partition of the lands held under an interest even if possession of some of the lands is only constructive, the terms of the latter section "lands held in common" limit its application to lands of which actual possession is held jointly by the estates concerned. Under section 4 possession is of the "interest" under section 6 of the "land."

Disputed title and denial of possession : burden of proof on objector.

**7. Board's No. 1884, dated 29th March 1888.**—A's application for partition of his 1-anna undivided share in an estate was opposed by his co-sharers, on the grounds that he was not in possession of the share registered, and that he had purchased the share (except some specific lands) having agreed to pay the entire revenue of the share without any deductions on account of the lands reserved. The Collector disallowed the partition on the ground that applicant was not in possession of his share in *all* the lands belonging to the estate, and that there were fair grounds for supposing that a *bond fide* dispute existed as to the title of applicant in some lands of the estate.

*Held* by Commissioner, that as applicant had registered his share without objection, and as the other co-sharers did subsequently had their names registered without any allusion to their title to any portion of the 1-anna share and that no dispute existed at that time, the burden of proving the existence of a *bond fide* dispute lay on the respondent; he directed the partition to proceed. The Board confirmed the Commissioner's order.

**8. *I. L. R., X Calcutta, page 435, Secretary of State versus Nundun Lall.***—In 1851 an estate was brought under batwara under the provisions of Regulation XIX of 1814. At such batwara portion of the estate being land covered with water and unfit for cultivation was not divided, but left joint amongst all the co-sharers, the land-revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and fit for cultivation, an application was made by one of the co-sharers to the Collector to partition the same under the provisions of Bengal Act, VIII of 1876, but that officer refused to do so, on the ground that the land “did not bear an assessed revenue and was not shown in the tauzi.”

Meaning of joint undivided estate.

In a suit brought under the above circumstances to compell the Collector to make the partition, and in the alternative to have it made by the Civil Court, *Held*, that though the reason given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Bengal Act, VIII of 1876, as the land in suit was not liable for the payment of one and the same demand of land revenue, and was therefore not a joint undivided estate within the terms of section 4, clause (9) of that Act.

*Held*, also that the word “estate”, as used in section 265 of the Civil Procedure Code, must not be construed in the same limited and defective sense in which it is used in Act VIII of 1876, but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. Chunder Nath Nundy *versus* Hur Narain Deb approved.

#### SECTION 6.

(See also ruling No. 6.)

**9. *Board's proceedings of 24th February 1900, No. 356 file 37 of 1900.***—Section 6, Chapter II, Act V (B.C.) of 1897, like all the provisions of Chapter II, is governed by the condition of actual possession required by section 4 with which the chapter opens

Separation must be based on actual possession.

**10. *Board's proceedings, serial No. 6, file 8 of 1902.***—The lands of six estates were held in common among the proprietors of those estates. A, who had purchased two of the estates at a revenue sale and had got symbolical possession thereof, applied to the Collector under section 6 of the Act for separation of the lands of those two estates, B, one of the proprietors, objected to the application on the ground that as A was not in actual possession of the whole of the two estates and as he (the objector) was in adverse possession of a part of the lands claimed by A, the separation

Symbolical possession not sufficient for separation under this section.



applied for should not proceed. The Collector, however, admitted the application on the grounds (1) that the symbolical possession obtained by A after the revenue sale should be held sufficient under the Estate Partition Act, and (2) that the objector's admitted separate possession of nearly four bighas should be treated as an encumbrance which might be cancelled under section 37 of Act XI of 1859.

With regard to the latter ground, it did not appear to the Board from the papers that the objector held the land as an under-tenure; and the area could not, besides, be regarded as lying exclusively within the estate under partition, since that estate had no specific lands, but only a share in lands held in common with five other estates. The Board held, therefore, that section 37 of Act XI of 1859 could not apply. They considered that the Collector's first ground was not without weight, and remarked that when the lands of an estate sold for an arrear of revenue are held in common with other estates, it might reasonably be argued that the Collector cannot give, and the purchaser cannot take, possession of specific lands, and that symbolical possession must, therefore, be accepted for the purposes of Estates Partition Act. The provisions of the Act requiring applicants for partition to be in possession of their interests are, however, stringent. *Actual* possession is indispensable as laid down in section 4, which applies to proceedings under section 6, and in the present case, such possession would have been the collection of rents from the tenants. The Board, therefore, agreed with the Commissioner that the application for partition should not have been admitted.

**Section 88  
applicable to  
proceedings  
under this  
section.**

**11. Board's proceedings, serial No. 5, file 15 of 1907 (Eastern Bengal and Assam).—**The provisions of section 88 of the Partition Act are applicable to a partition under section 6.

**Shares of  
proprietors in  
separate estates  
may be  
partitioned after  
separation of  
common lands.**

**12. Board's proceedings, serial No. 4, file 71 of 1904.—**The lands of two estates were intermixed and were held in common by the proprietors of both estates. An application for partition was made under the old Act (Bengal Act VIII of 1876); but an objection having been filed to the effect that the application should not be admitted unless a joint petition was made by all the proprietors under section 129 of the old Act of 1876, the partition was disallowed by the Board in 1893.

The same proprietors applied again for partition under section 6 of Act V (B.C.) of 1897, filing separate applications for separation of the lands held in common in the case of each estate. The objectors renewed the objections that they had made successfully under the old Act, pointing out that section 100 of the new Act was the same as section 129 of the old Act and contending that the former

objections still held good. The Collector rejected the objection and directed that the partition should proceed under section 6 of Act V (B.C.) of 1897, and his order was upheld by the Commissioner. The case having come up to the Board on appeal, the following judgment was delivered:—

“Section 6 of Act V (Bengal) of 1897 is a new section and is not to be found in the former Act (VIII of 1876) . . . There is no reason to suppose, as has been contended for the appellant, that the section contemplates the existence of lands belonging to each estate separately *in addition to the land* in common by the group of estates. The language of the section does not afford any ground for this limited interpretation. In the present case, the two estates have all the land in common, and no land appertaining to either separately. They are owned by the same proprietors. It was open to any one or more of the proprietors to apply in the first instance that there should be a fair apportionment of the common lands between the two estates. After such division has been carried out, it would be perfectly right to proceed further and ask that the shares of the proprietors in each of the estates be partitioned under the provisions of the Act.”

“This has really been the course pursued in this case, and the Board see nothing wrong or illegal in it. In this view, the previous order to which reference has been made is no bar to the present proceedings.”

#### SECTION 7.

**13.** *18. W. R., page 327, Tripura Sundari Chaudhuri versus Kali Chandra Roy Chaudhury.*—A private partition, though not binding against the Government or against a purchaser at a sale for arrears of Government revenue, who derives his title directly from Government, is binding as between the parties to the *batwara* and persons claiming title under them

Private partition not binding against Government but only against parties.

**14.** *7. W. R., page 51, Doorya Kanta Lahoory versus Radha Mohan Guha Neogy.*—Lands held in joint possession, each proprietor receiving his proportion of the rent according to his interest in the land, cannot be divided under the *batwara* laws.

Partition inadmissible where rent divided according to interest.

**15.** *5. W. R., page 40, Permessur Dutt Sahee versus Audh Shahajee.*—Where an estate has been divided by private arrangement more than 50 years ago, and the division has been subsequently maintained in a judicial decision, since which the co-sharers have for many years exercised rights of ownership independently of each other, a *batwara* of the whole estate cannot be demanded, even though a regular separation of one share has been immediately obtained by a suit in a Civil Court.

Private partition, upheld in Civil Courts, bar to partition under the Act.

Antiquity of private partition no reason for fresh partition.

**16.** *Patna Law Journal III, page 188, Manna Chaudhury versus Munshi Chaudhury, etc.*—The mere fact that the original partition proceedings have been lost in antiquity is no reason for disturbing divisions which have existed for a long period.

Section 25 of the Estates Partition Act, 1897, does not bar a suit for a declaration that by reason of a former partition an order of the Board of Revenue directing a revenue partition to proceed is bad, and for an injunction restraining the defendants from proceeding further with the partition in the strength of that order.

Subsequent disagreement cannot overside private partition.

**17.** *XV. W. R., page 165, Ajoodhya Persad and others versus Kristo Dayal and another.*—Parties holding separate portions of an estate according to private arrangement are not in a condition to apply to the Collector for a *batwara*, when unable afterwards to agree among themselves.

Private partition binding on purchaser.

**18.** *Board's proceedings of 30th January 1886, No. 58, file 67.*—*Cf. section 12 of Act VIII (B. C.) of 1876.*—The private partition of an estate, such as that contemplated by this section (12 of Act VIII (B. C.) of 1876) having taken place, it was held to be binding on the purchaser of a portion of one of such separated estates, as he must have been well aware at the time of his purchase of the existence of a private partition between his vendor and other co-proprietors. He could not therefore claim a partition under this Act.

Onus on those who wish to prove private partition.

**19.** *Board's appeal 19 of 1906 (E. B. and A.), file 19 of 1906.*—The Board have held that the word "proprietors" in this section, means "proprietors at the time when the private partition was made" and also, that the onus of proving (1) that the private partition was formally made and agreed to by all the proprietors, and (2) that they took separate possession of the lands lies on the parties who put forward the private partition as a bar to partition under the Act.

To bar partition fact of private arrangement and possession must be proved.

**20.** *Board's proceedings of June 1885, No. 437 A.*—Where an application for partition is opposed on the ground of an alleged previous partition, it is incumbent on the objector not only to establish by satisfactory evidence the fact of such partition having taken place, but also that in accordance with such arrangement each party is in possession of separate lands held in severalty.

Separate possession must be clear and by all proprietors, to bar partition.

**21.** *Board's proceedings of May 1886, No. 160, file 262.*—Separate possession in severalty of one proprietor will not suffice. It is necessary that each proprietor should hold his land in this manner, and that separate possession must be one by metes and bounds, each proprietor's share being clearly and fully defined.

**22. Board's proceedings of 13th March 1886, No. 205, file 35.**—The Board have on more than one occasion held that the partition referred to in this section (12 of Act VIII (B. C.) of 1876) as sufficient to bar proceeding for a *batwara* under this Act must be of the most complete and formal description that there must be distinct demarcation of the lands of each recorded proprietor, and that as required by the section itself, clear evidence must be forthcoming to show that each proprietor of the estate is in possession of lands severally representing his interest in the estate.

Private partition must be clear and complete.

**23. Board's proceedings, file 88 of 1906.**—The mere fact that there is division of the lands between many groups of proprietors as ascertained and recorded by the Settlement Department is in no way a bar to an application for partition by the Collector. Section 5 of the Act expressly contemplates a state of things in which recorded proprietors may have proprietary rights in specific mauzas or lands, and it gives directions as to how the Collector is to proceed in such circumstances. Section 7 only comes into operation in bar of an application for partition by the Collector if it be shown that "the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors and that each proprietor in pursuance of such arrangement, has taken possession of separate lands to be held in severalty as representing his interest."

Partition only barred when private arrangement formally made, and possession taken accordingly.

In the particular case under reference, no attempt was made before the local officers or before the Board to prove that any such formal arrangement or agreement, was ever come to; nor was any document produced with regard to such agreement; nor was the date of such arrangement or agreement suggested.

A copy, extract from Register D, showed that in one of the six villages containing lands belonging to this estate there were 30 groups of proprietors owning shares, and another village 23 groups, in another village 43 groups, and so on. To deny a separate estate and separate responsibilities to any one of the hundred or more of proprietors of this estate and to all of them because their interests had been ascertained and recorded by groups and individuals as they necessarily must be ascertained in settlement and registration proceedings was held by the Board to be a misapplication of the provisions of section 7.

**24. Board's proceedings of 29th May 1886, No. 276 file 472.**—An estate was at first privately divided in two equal shares. After some years it was privately divided into six equal shares. After several years it was held by no less than 28 recorded proprietors. One of them having a one anna interest applied for partition, and an objection was preferred that there had been a private partition

Private partition not binding, where not representing present interests.

which under this section (12 of Act VIII (B. C.) of 1876) would be a bar to a partition under this Act. The Board held that the circumstances having changed from the time of the original private partition, and even from the second, when there were six equal shares, the partition could proceed. It was clear, the Board held, that the division into six *pattis* did not represent the existing state of things on the property, and that it could not be said that, in accordance with this division, each of the present proprietors was in possession of separate lands representing his interest in the estate.

Private partition  
not binding on  
subsequent  
additional  
co-sharers.

**25.** *Board's proceedings, file 52 of 1906, serial No. 4.*—The Collector rejected an application for partition on the ground that there had been a previous private partition of the estate within the meaning of section 7 of Act V (B. C.) of 1897, and his order was upheld by the Commissioner. An appeal having been preferred to the Board, they reversed these orders and directed that the partition should proceed. The following judgment was delivered:—

“.....It seems clear that a division of the land of the estate was made in the year 1257 (corresponding to 1850-51) with the consent, apparently, of all the then existing proprietors. In fulfilment of that partition two parties were formed. Of the then existing proprietors, 2 took one *patti* and 8 the other *patti*. This division of lands still holds as between the descendants of the proprietors in the respective *pattis* and those who have purchased interest from them.

“There are now 15 groups of proprietors consisting of 33 persons in all. The question is whether all these proprietors are debarred from obtaining separate estates and complete individual responsibilities *inter se* because 56 years ago 10 proprietors then in possession made a division of the estate into 2 blocks.

“The Collector holds that the private partition made in 1257 B.S. and the separate possession since held collectively by the proprietors of each *patti* bars the present application, and the Commissioner comes to the same conclusion. It is not clear to the Board, however, either that in 1257 each of the 10 proprietors in fact took possession of separate lands to be held in severalty as representing his interests in the estates, or that even if such separate possession was taken in 1257, that partition can bar the 33 proprietors of the present day from obtaining the relief which some of them seek.

“Section 5, clause 2, expressly provides for the case of proprietors having rights over specific lands held by them in severalty; and this clause furnishes the first lines of arrangement to be made in the partition of an estate held as in the present case.”

"In this view, the Board think it unnecessary to discuss the further ground of appeal which has been based on the fact that 27 bighas of land are held in common tenancy between the two 8-anna pattis. The partition will proceed.

**26. Board's proceedings, file 49 of 1906, serial No. 4.—**

An estate consisting of four villages was under partition. An objection under section 7 of Act V (B. C.) of 1897 was filed, but was struck off as it was not duly prosecuted. After the case, however, had reached the stage of settlement of assets, the Collector recommended to the Commissioner that the case should be struck off, and this recommendation was accepted by the Commissioner. On appeal, the Board set aside the Commissioner's order and directed that the partition should proceed, and made the following remarks:—

Section 7 only bars partition when all conditions of that section exist and continue unchanged.

"It is observed that the effect of the Commissioner's order has been to deny partition to a very large body of proprietors who are under an ultimately joint responsibility to the Collector. This denial is based on the ground that many years ago separate liabilities were agreed upon by the then existing body of proprietors. The Collector states that in one of the four villages there is at present only one proprietor, in another village there are 51 proprietors, and in the remaining two villages there are 11 pattis and 10 pattis, respectively. It is stated before the Board that there are in all 241 proprietors in this estate and they desire 18 new estates to be formed. About 50 of the proprietors have actually been represented before the Board and have asked that the partition may proceed.

"It is the opinion of the Board that unless the state of things which is provided for in section 7 of the Act can be said at the present moment to exist in this estate, there is no sufficient reason for refusing to allow partition to proceed. The Board turn therefore to consider the term of section 7 and the interpretations that have been put upon it in their rulings. The Collector has referred to the ruling of 1884 which is cited in note 1 under section 34 in the Manual of 1902. Other relevant rulings are cited in the notes under section 7 of the Act. It will be seen that in the ruling of the 29th May 1886 the Board held that an ancient partition of an estate into two equal shares afterwards divided into 6 equal shares did not bar a partition at a later date when there were 28 recorded proprietors.

"Section 7 of the Act of 1897 corresponds to section 12 of the Act of 1876 with the addition of words requiring that when a private arrangement is pleaded in bar of a partition, that arrangement must be shown to have been formally made and agreed to by all the proprietors. An explanation has also been added to section 7 requiring that an objection under this section must be pleaded before the Collector records an order under section 29. The Board

have referred to the debates in Council which preceded the passing of the Act of 1897 and they find that it was proposed in Council (page 250 of Volume 2 of the Debates of 1897) that after the word "Proprietor" in this section should be inserted the words "existing at the time when the arrangement was made." The Hon'ble Member in charge of the Bill, however, declined to accept the amendment proposed. He stated that the Select Committee had considered the proposal of amendment and were of opinion that the words suggested were superfluous. The Hon'ble Member added as follows:—

"The arrangement made by all the proprietors must be by the proprietors existing at the time because proprietors who were not then existing could not have made arrangement, and persons who became proprietors after making arrangements were not proprietors at the time the arrangement was made."

"The rulings quoted above and the arguments of the Hon'ble Member in charge of the bill appear to the Board as at present constituted, to be reasonable in the interests of proprietors. It is not reasonable or expedient that a body of over 200 proprietors or any of them should be unable to obtain complete individual security and responsibility to the Collector because many years ago four persons or groups of persons divided their responsibilities. Nor would it be a sufficient answer to state that it is open to the proprietors to go to the Civil Court. It is for the Collector to give them the relief which they require from the yoke of joint responsibility which, in the village, if not in the inter-village relations, may be intolerable.

"The Board consider that the provisions of section 7 should be allowed to operate in bar of partition only when it is sure that all the conditions of the section were fulfilled and exist unchanged. They hold that it is still more necessary to insist upon the fulfilment and continuance of the conditions laid down in section 7 when these conditions are taken into account in proceedings under section 34."

**Private partition must be of whole property.**

**27. Board's proceedings of 4th September 1886, No. 46, file 197.**—In an estate a partition of which was applied for under this Act there had been private partition of the lands, leaving 68 bighas held in *ijmali* tenure. The case having come up to the Board in appeal, they observe that "as the Commissioner has rightly remarked, section 12 (of Act VIII (B. C.) of 1876) contemplates the division of all the lands of an estate and separate possession of each proprietor or set of proprietors of lands representing their full interest in the estate. The exclusion of the 68 bighas is therefore fatal to the claim of a private partition having been effected.

**28. Board's proceedings of March 1886, No. 98, file 91.**—The private partition contemplated in this section is one of the entire estate, and not merely of one village out of several. A division of only one village out of several, however complete, would in no way operate as a bar to partition.

Partial private partition no bar to subsequent partition.

#### SECTION 8.

**29. I.X, I. L. R. Calcutta, page 244, Mohadeo Koorer versus Haruck Narain and others.**—A Hindu widow who has succeeded to a share in a revenue-paying estate as heir to her deceased husband is not a person having a proprietary interest in an estate for the term of her life only, within the meaning of section 10, Bengal Act, VIII of 1876. Even if she were, a civil court would not be debarred from decreeing partition of a revenue-paying estate at her instance if a proper case for the passing of such a decree be made out by her.

Hindu widow's interest not merely life interest.

**30. Board's proceedings of 19th March 1886, No. 112, file 132.**—A Hindu widow and a recorded share-holder of an estate having an adopted son applied to have her share of the estate partitioned off. The application to the Collector was opposed by one of the co-proprietors of the estate on the ground that her interest in the estate was one for life only, and that therefore under section 10 of the Act [Act VIII (B. C.) of 1876] she was not entitled to claim a partition. The Collector held that with reference to the opinion expressed by the High Court in the case of Mohadeo Koorer *versus* Haruck Narain (IX, I. L. R. Calcutta, page 244), the widow was bound to establish in a civil court exceptional circumstances justifying her application for partition. The Commissioner on appeal remanded the case with instructions that the partition should be allowed to proceed if the adopted son of the widow was of age and of sound mind, and there was no reasonable objection on his part. The Commissioner subsequently stopped the partition proceedings. The adopted son having given his consent, it was eventually held by the Board on appeal that as the name of the applicant was recorded in the Collector's register in respect of her share for the partition of which she claimed, and as her possession was not disputed and the interests of the heir presumptive were according to the terms of the decision of the High Court not injuriously affected by an order for partition, the appellant Hindu widow was entitled to the partition she claimed.

Hindu widow may be entitled to claim partition.

**31. Board's proceedings of 30th December 1899, No. 77 file 119.**—The *matwali* of a *waqf* is not necessarily debarred under this section.

Matwali not necessarily debarred.



Section 8 does not prohibit absolutely partition on application of proprietor possessing only life interest. Discretion rests with revenue authorities.

**32. Board's appeal No. 81 of 1914, file 19 of 1914.**—The Board referred the following points for the opinion of the Hon'ble the Advocate-General:—In Board's proceedings of 30th July 1881 (No. 201, file 1) it was held that the terms of section 10 Act VIII (B. C.) of 1876, which disqualified a proprietor with a life interest only from claiming partition were absolute. Section 10 of Act VIII (B. C.) of 1876 is identical with section 8 of Act V (B. C.) 1897, except that from the latter the words "deemed to be a person" were omitted between "shall be" and "entitled." The omission does not materially affect the same. The points on which the Board desired to be advised was whether section 8 must be read as absolutely prohibiting the revenue authorities from allowing partition on the application of a proprietor with a life interest only or whether the revenue authorities are competent to exercise their discretion and admit the application for partition, although the proprietor with a life interest only has, of course, no power to claim partition as of right.

The opinion given by the Hon'ble the Advocate-General was as follows:—"Though a person having a mere life interest in an estate is not entitled to claim partition as a matter of right under the Estates Partition Act, V (B. C.) of 1897, there is some authority for the proposition that the Civil Courts, nevertheless, have power, in a proper case, to decree partition on the application of such a person.

Section 8 of Act V (B. C.) of 1897 provides that no person, having a proprietary interest in an estate for the term of his life only, shall be entitled to claim partition under the Act.

The Board of Revenue have held (Partition Manual, 1902, page 7, Note 1 on section 8) that section 10 of Act VIII of 1876, which was almost identical with section 8 of the present Act, was absolute.

In *Mohadeo Koor versus Haruck Narain* (1889, I. L. R. 9 Calcutta 244) the High Court, Calcutta (Mitter and Norris J.J.) held that a Hindu widow succeeding as heir of a deceased husband to a share in a revenue-paying estate is not a person having a proprietary interest in an estate for the term of her life only within the meaning of section 10 of Act VIII of 1876. At page 250 it was stated in the judgment. "But even if section 10 were applicable to a widow's estate still a Civil Court would not be debarred from decreeing partition of a revenue-paying estate at the instance of a Hindu widow, if a proper case for the passing of such a decree be made out by her. It would be the duty of the court to see, before decreeing partition, that the interest of the presumptive heir be not affected by such decree. From the peculiar nature of a Hindu widow's estate we are of opinion that the above restriction should

be put upon her right to enforce partition, a right which is inherent in every owner of property. (*See Shama Sundari Debi versus Jardine Skinner*, 3 B. L. R., Ap. 120).

The court seem to have held the view that section 10 of the Act of 1876 was not absolute in the sense that though it took away the right of a mere life tenant to claim partition, yet it did not debar the Civil Court from decreeing partition in favour of a person having merely a life interest, provided that the court is satisfied that there is a *bona fide* claim arising from such necessity as renders partition desirable between 2 joint owners, and that the interest of the reversioner is represented and protected.

Apart from the authority of this decision I should have inclined to the view that, inasmuch as section 8 prevents a person who has merely an estate for life from being entitled to claim partition under the Act, the Civil Courts would thereby be precluded from decreeing partition in favour of a person who was not entitled to claim it.

Having regard, however, to this decision I am of opinion that the Civil Courts would be justified in acting upon it in a proper case. It seems clear from the decision in any event, that a Hindu widow, who succeeds, as heir to her husband, to a share in a revenue-paying estate is not a person disentitled to claim partition under section 8, as earlier authorities had held that a Hindu widow's estate is not merely an estate for life (*see per Peacock C. J.*, 9 W. R. 108, 9 Moore Ind. Ap. 539; *per Colville C. J.*, 1 Boulnois at page 129).

#### SECTION 11.

**33. Board's proceedings of 18th December 1886, No. 85, file 247.**—In the case of an estate in which several mauzas had completely diluviated since the measurement of 16 years before, and valuable large accretions had occurred in other mauzas, none of which were shown in any of the maps or papers, the Board observed (there being apparently a number of small share-holders) that it would be incumbent on the officers making the partition to exercise considerable caution that the Government revenue does not ultimately suffer by the *batwara*, as small shares, consisting of lands in villages subject to active diluvion, may completely disappear in a few years to the serious detriment of the Government revenue.

In estates subject to diluvion care to be taken to safeguard Government revenue.

**34. Board's appeal No. 7 of 1915, file 14 (S. & S.) of 1915.**—The erroneous inclusion of unassessed land in a partitioned estate does not affect the statutory right which the revenue officers possess under section 3, Regulation II of 1819, of assessing to land revenue all lands which were not assessed at the time of the permanent settlement. The accretions should have been excluded from the estate.

Arrears liable to resumption to be excluded from partition proceedings.

under partition and the Partition Officer was not competent to deal with them, and his proceedings so far as they affect these accretions were *ultra vires*.

Value of land under partition the only guarantee for Government revenue.

**35. Board's appeal No. 5 of 1917, file 3 of 1917.**—In an appeal under section 113 (a) against the order of a Commissioner in striking off the partition of an estate under section 34 on the ground that the partition if proceeded with would endanger the Government revenue, as the assets of the area under partition on the existing assessment were less than the Government revenue, the appellant expressed his readiness to give any guarantee required for the safety of the Government revenue, the Board held that the only guarantee admissible was the value of the land and no other sort of guarantee could be accepted.

#### SECTION 12.

Proceedings of Collector not controllable by Civil Court.

**36. I. L. R. 15 Bombay 527, Shrinivas Haumant versus Gurunath Shrinivas.**—When the Collector makes a partition under section 265\* of the Code of Civil Procedure, the civil court has no power to examine his work, or to direct him to make a fresh partition.

Proceedings under section 42 include delivery of possession.

**37. I. L. R. 11 Bombay 662, Probhudas Lakhmidas versus Shankar Bhoi.**—The Deputy Collector to whom a decree has been referred under section 265\* of the Civil Procedure Code (Act XIV of 1882) for partition, is not confined to mere division of lands decreed to be divided, but includes the delivery of the shares to their respective allottees.

Concurrent jurisdiction of Civil Court and Collector.

**38. Board's proceedings of 4th May 1901, No. 205, file 60.**—It is clear that the civil court exercises concurrent jurisdiction with the revenue authorities in the partition of estates, with this distinction that while the revenue authorities are empowered not only to divide the lands, but also to apportion the land revenue and thus form separate estates, the civil court is competent only to divide the lands and give possession of them to the respective sharers. Suits for the partition, or for the separation of a share of an undivided estate paying revenue to Government are among those specified in Chapter XIX of the Code of Civil Procedure, relating to the execution of decrees; and section 265\* provides for the execution of the decrees in such cases by the Collector, according to the revenue law for the time being in force for partitions, this jurisdiction of the civil courts in partitions is recognized and even amplified by section 12 of Act V (B. C.) of 1897, which authorizes those courts, at their discretion, to give possession themselves under their decrees, instead of observing section 265\* of the Code of Civil Procedure, provided that in such cases the entire estate would continue liable for the land revenue. The Estates Partition Act further empowers the civil courts, by section 28, to direct the Collector, when an

\* Now section 54, Act V of 1908.

application for partition has been made to him, to assign to a sharer land representing a specified interest in the estate, or any specified village or tract of the estate, or to divide off any specified land or villages and assign it or them to a sharer, and, in each case, to form a separate estate of the portion of the parent estate so assigned. The land revenue to be paid by the separate estate must not, however, be specified in the order, the duty of assigning it being expressly reserved to the Collector. The jurisdiction of the civil courts is not stayed even after an estate has been brought under partition by the Collector or the separate estate, formed by the Collector have been constituted, with separate liability for the land revenue; but concurrently with the proceedings under the Estates Partition Act, decrees specifying the extent of interest of individual sharers may be made, subject to the conditions that they shall be made in recognition of the proceedings before the Collector, and shall be framed so as to admit of their being carried out without disturbing the Collector's order specifying the separate estates which are to be formed or the division of the parent estate into separate estates which may have been actually made (sections 25, 26 and 27). The jurisdiction of the civil courts in partitions is thus full and well specified in the law. Notwithstanding the provisions of the Code of Civil Procedure and the Estates Partition Act, which have now been quoted, it has been argued in certain appeals to the Board that section 4 of the latter Act gives a right to claim partition in the Collectorate which cannot be affected by a civil suit for partition. This contention cannot be accepted. The right conferred by the section is, in the first place, not absolute. The Collector may, for any reason which appears to him good and sufficient, reject an application for partition (section 22); and the Commissioner may similarly, order a partition struck off the file if it appears to him that any sufficient reason exist why the partition should not be proceeded with. A discretion, which may be exercised with considerable freedom, is thus left to the revenue authorities. In the second place the right to partition is given only in respect of an interest in the estate generally, or in specific mauzas or lands (section 5) of which the applicant is in *actual possession*. Possession, when determined by decree of the civil court, must be upheld. It follows, accordingly, that a Collector is bound to recognize any such decree in deciding as to the actual possession of the sharer before admitting an application for partition. In the Board's opinion, therefore, partition cannot be claimed under section 4 of the Estates Partition Act without reference to, or in disregard of, any proceedings which may have been taken in the Civil Court.

2. The Board's view is that, in the exercise of their concurrent jurisdiction, the Civil Court and the Collector

must each take cognizance of proceedings for partition of the same estate already instituted before the other: if a suit for partition has been instituted in the Civil Court, the Collector should not admit an application for partition: his special function of assessing the land revenue on the separated shares can be exercised after the lands have been divided by the Civil Court. If on the other hand, the Collector has brought an estate under partition, the Civil Court should not allow a suit for partition of the lands, but may only admit a suit for declaration of the extent of interest of a sharer, subject to the conditions laid down in sections 26 and 27 of the Estates Partition Act, already quoted. When, again, a decree has been made by the Civil Court, the Collector is bound to accept the division of the lands carried out under the decree, and his action should be limited to adjusting the revenue for the several estates thus formed in proportion to their assets. For instance, if a four-anna sharer has been assigned lands with assets equal to five annas of the entire assets of the estate, the Collector should, unless special reason exist for a departure from that course, assess the separate estate with five annas of the revenue of the parent estate. The Collector may be set in motion by the Civil Court either under section 265\* of the Code of Civil Procedure or section 28 of the Estates Partition Act.

3. A conflict of jurisdiction between the Civil Court and the Collectorate should manifestly be avoided, and it is for this reason that the jurisdiction of each should be stayed or restricted by action already taken by the other.

(But see Ruling No. 39 below).

**Concurrent  
jurisdiction of  
Civil Court and  
Collector.**

**39. Board's proceedings, Collection No. 7, file 67 of 1903.**—(i) The Board are of opinion that the arguments contained in the proceedings of 1901 (Ruling 38 above) go too far and do not give sufficient weight to the provisions of Chapter III of the Act. Those arguments appear to imply that the Collector is bound to give a separate estate with separate revenue in exact conformity with the separation of lands and separate possession given by a Civil Court. Such a contention seems to be not only in contravention of the statutory prohibition of section 11, but also it distinctly overrules the provision of section 12 and it would take away all discretion from the Collector under section 13. The whole purpose of the Partition Act as a Revenue Act, the whole ground on which the Government has reserved to itself powers to interfere in, and to take under its direction and control any partition of an estate would thus be removed and the Collector would become nothing more than an official register of the decrees of the Civil Court, which he would be bound to supplement by giving a separate revenue to the lands of which the Civil Court might give separate possession to a co-sharer.

\* Now section 54 of Act V of 1908.

(ii) It is not desirable that the decisions of the Collector and of the Civil Court as to possession of any plot should clash. But the Board do not think that any proprietor can claim to have a separate estate created of parcels of land scattered in such a way as, in the opinion of the Collector (Section 13), to endanger the safety of the land revenue. If the Civil Court decision is of such a nature, the Collector may refuse partition, and the only way in which a revenue partition can then be made is under proviso (a) of section 13 of Act V of 1897. The power of the Collector to stop proceedings if the safety of the land revenue is endangered appears to be absolute, and he cannot be compelled to give a separate revenue to any lands if, in his opinion, there is this danger.

(iii) The views expressed above as to the powers of the Collector to refuse partition are referred to in paragraph 1 of Ruling 38, but appear to be ignored in paragraph 2 thereof. It appears to be even doubtful if a party who has obtained a Civil Court decree for specific lands of an estate, which are so scattered that they cannot in the opinion of the Collector with safety form a new revenue-paying estate, can for ever debar all his co-proprietors from ever obtaining separate revenue-paying estates for their shares by holding on to his own specific lands. Such a case would, however, correspond to a case under section 7 of the Act and the bar could only be removed by consent or decree of a Civil Court. The Collector is so far restricted by the action of the Civil Court and in this matter there should be no conflict of jurisdiction between them.

#### SECTION 14.

40. *Board's proceedings of 20th February 1886, No. 61, file. 293.—Cf. section 14 of Act VIII (B.C.) of 1876.*—A certain share in an estate was sold, reserving certain rent-free and homestead lands. The purchaser, however, was made liable by the deed of sale for the revenue of the purchased share: by this was meant, not the revenue proportionate to the amount of land actually sold, but the revenue proportionate to the share in the estate that was sold. The Board, agreeing with the Commissioner, held that under this section (14 of Act VIII (B.C.) of 1876) the partition could not proceed.

If purchaser liable for revenue of share of estate (though specific parts reserved) portion not admissible.

41. *Board's proceedings, No. 177 A. of February 1891.*—In an enquiry under this section it would not be necessary for a Collector to require strict proof before refusing to make a partition. If an application being made the Collector should find that as a fact an arrangement was in existence and was recognized by the co-proprietors, under which some of them held their shares on payment of a certain specific amount of the joint *sadar jama*, not being

Private arrangement existing and recognized, must be respected.

in proportion to the actual produce of such shares, and without reference to such proportion, he would properly refuse to make a *batwara* which would destroy the actual status as he finds it to exist in this respect by separating off estates each liable for a proportionate share of the joint *sadar jama*.

Petty  
reservations no  
bar to partition.

42. *Board's proceedings, No. 270 A. of May 1886.*—A having applied for partition of  $\frac{1}{3}$ rd recorded share in a very extensive estate, his application was opposed on the ground that he was not in possession of the share for the separation of which he had applied, and that his application was barred under section 14 owing to the reservation of certain lands out of the shares sold by objector's father to applicant's predecessor in title without any corresponding deductions having been made in the proportionate share of the Government revenue to be paid on the fractional shares so sold. It was held by the Board on appeal that it would be absurd to suppose that any such petty reservations as made in this case could be held to debar the recorded proprietor of the  $\frac{1}{3}$ rd of the entire estate from being considered within the meaning of the law as in actual possession of his recorded share. Section 14 did not apply to this case, as the Government revenue was in no way endangered.

#### SECTION 17.

When once  
struck off, fresh  
application  
necessary.

43. *Board's appeal No. 180 of 1894.*—If a case is once struck off, a fresh application under section 17 specifying all the co-sharers, and fulfilling the requirements of sections 18 and 19 are necessary.

Division of  
revenue cannot  
be made by Civil  
Court.

44. *I. L. R. 24 Calcutta 725 (Full Bench) Jogodesherry Debea versus Kailash Chandra Lahiri.*—Section 265 of the Code of Civil Procedure does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for; a Civil Court therefore has jurisdiction to decree partition in such a case; and a suit for possession, after partition, of a share in part of an undivided estate, in which part alone the plaintiff has a share, is maintainable in a Civil Court if no division of revenue is sought (*Debi Singh versus Sheo Lall Singh I. L. R., 16 Calcutta 203* approved and followed; *Meherban Rawoot versus Behari Lall Barik I. L. R., 23 Calcutta 679* overruled).

Revenue-paying  
estates only  
partitionable by  
Collector.

45. *I. L. R., 8 Calcutta 537 Damoodar Misser and another versus Sennabutty Misrain and others.*—*Cf. section 17 of Act VIII (B.C.) of 1876.*—Revenue-paying estates must be partitioned by the Collector. They cannot be partitioned by metes and bounds by the Civil Court Amin, and if the shares in such an estate are not separate estates but are mere fractional shares of integral estates, they cannot be partitioned in the absence of the other co-sharers.

**46. I. L. R. 8 Calcutta 649, Badri Roy and another versus Bhugiraj Narayan Dobe and others.**—Partition of an estate paying revenue to Government cannot be effected in a Civil Court.

Revenue-paying estates only partitionable by Collector.

#### SECTION 22.

**47. Board's proceedings of 20th February 1886, No. 97, file 630.**—*Cf. section 23 of Act VIII (B.C.) of 1876.*—Patnidars cannot be considered as persons claiming a proprietary right who are entitled to object under this section [23 of Act VIII (B.C.) of 1876] but a recorded part proprietor of a mauza, a portion of which mauza also formed a part of the estate under batwara, so that the name of such proprietor would be entered in the application under section 18 (f) [of Act VIII (B.C.) of 1876] was held to be entitled to object.

Patnidars not being in possession of proprietary status cannot object.

**48. Board's appeal No. 152 of 1897.**—Partition of lands of a revenue-paying estate made by the decree of a Civil Court is no bar to a partition by the Collector; but the papers of the Civil Court should, if possible, be accepted by the Collector.

Partition by Civil Court no bar to Collectorate partition.

#### SECTION 24.

**49. Board's proceedings, serial No. 4, file 39 of 1908.**—It has been brought to the notice of the Board that injunctions, or precepts, have been issued to Collectors in certain cases without authority by Civil Courts to stay partition proceedings. Collectors should always report to Commissioners the issue of injunctions by Civil Courts to stay proceedings; and, when no appeal against such injunctions is preferred by parties affected, Collectors should consider whether, if the injunction be addressed to the Revenue Court, an appeal should be preferred to the District Judge, or whether the injunction may properly be disregarded. In doubtful cases reference should be made to the Legal Remembrancer.

Action by Collector when injunction by Civil Court appears to be wrong.

#### SECTION 26.

**50. XVI W. R. page 34, Dewan Abdul Reza versus Jabunnessa Bibi and another.**—In a suit for declaration of title in which plaintiff also claimed an allotment of his share, which had been referred in a *batwara* then in progress, held that, as it was found that plaintiff's title was established, he was also entitled to a precept to the Collector directing him to award to the plaintiff a share corresponding with that title.

Where title established, claim to partition may be ordered.



**SECTION 28.**

(See sections 17, 22 and 26 above).

**SECTION 29.**

Objections to be considered.

**51.** *Board's proceedings of 16th December 1889, No. 58, file 77 of 1899.*—In considering if obstacles exist, the Collector may have to consider objections which he has rejected as out of time under section 22.

Pending of partition proceedings no bar to declaration by Civil Courts in matters not affecting the revenue.

**52.** *I. L. R. 15 Calcutta 198, Zakarun versus Gauri Sankar.*—The jurisdiction of the Civil Court in matters of partition of a revenue-paying estate is restricted only in questions affecting the right of Government to arrears and collect in its own way the public revenue. Held accordingly that the tendency of partition proceedings before the Collector (under section 29) was no bar to a suit for declaration that under a partial partition, effected between the co-sharers, a portion of land has been separately allotted to the plaintiff.

**SECTION 30.**

Application must be made while proceedings in progress.

**53.** *Board's proceedings of 26th September 1896 No. 488C, file 14 of 1896.*—Respondent purchased a proprietor's share in an estate after the partition proceedings had been begun and made an application to the Collector after the proceedings had been completed and submitted to the latter for approval under section 80 [Act VIII (B.C.) of 1876] raising objection which the vendor had not raised in the earlier stages of the proceedings. This was rejected by the Collector. On appeal the Commissioner passed an order which in effect set aside the general arrangement under section 75. Held by the Board that the Commissioner's order was *ultra vires*, under section 32 of the Act the application must be made while the partition proceedings are actually in progress and not after they have been brought to a close except as regards the final sanction and that section 120 only enabled a Commissioner to return the partition proceedings for the correction of some obvious substantial error of detail, which error must be an ascertained one, the mode of amendment being indicated.

**SECTION 33.**

Collector can strike off case only on application of all recorded proprietors.

**54.** *Board's proceedings of 17th September 1881, Collection 1, file 1648.*—*Cf. section 35, Act VIII (B.C.) of 1876.*—From this section it is clear that a partition case can only be struck off the file by a Collector on a petition from all the recorded proprietors that they do not wish the partition to proceed. The power which is reserved to a Commissioner under section 36 [of Act VIII (B.C.) of 1876] is

quash a partition must be exercised, at the Commissioner's discretion, with reference to the circumstances of each case.

#### SECTION 34.

(See also rulings under section 113.)

**55.** *Board's proceedings of 8th November 1884, No. 248, Collection 1, file 247.—Cf. section 36, Act VIII (B.C.) of 1876.*—When an estate was entered under one number and one sadar jama in the Government rent-roll, and the two mauzas of the estate were jointly liable for the Government revenue, it was held that there was no legal obstacle to the application of the owner of an eight-annas share in one of the mauzas for a batwara of his share, and that the whole estate must be considered liable to measurement and assessment under the batwara proceedings. It was added—"The identity of the separate villages must be considered as having become merged at the time of the permanent settlement in the common responsibility which they jointly share for the Government revenue of the entire estate. A batwara can only be effected under section 6 of the Partition Act, [*i.e.*, Act VIII (B.C.) of 1876] and the separate and distinct manner in which the two mauzas have been held by perfectly distinct proprietors offers no legal disability in the way of the completion of the batwara." Whatever the early history of the mauzas might have been (with regard to separate engagement), the fact to be regarded was that at the time of the batwara they constituted a joint and undivided estate. The Board, therefore, reversed the Commissioner's order that the case should be dealt with under section 36 of Act VIII (B.C.) of 1876.

Application of share in one mauza of estate may apply for partition.

#### SECTION 37.

**56.** *Board's proceedings No. 627 A., dated 9th December 1897.*—The cost of a partition should be levied during the progress of the partition from the persons who are proprietors at that time within the meaning of section 3 (v) of the Act. The costs of the partition are not a lien or charge on the property.

Costs of partition a charge on proprietors not on the property.

#### SECTION 38.

**57.** *Board's proceedings of 13th May 1882, No. 100, file 963.*—As the cost of a partition is regulated, not by the Government revenue or the gross assets or the net profits but by the area, it does not seem unreasonable that the area should be made the basis of determining the proportion of costs to be paid by each of the parties. If the

costs to be apportioned on basis preferably of area, or of revenue.

circumstances of an estate render it impossible to apportion the expense of the partition in accordance with area, the apportionment should be made in accordance with the amount of Government revenue payable on account of each of the shares, into which it is proposed to divide the estate.

**SECTION 40.**

Limitation for recovery of costs is 60 years from completion of partition.

**58. Board's proceedings, serial No. 4, file 89 of 1909.**—It has been held by the Legal Remembrancer that the period of limitation in respect of the recovery of *batwara* costs is 60 years under Article 149 of the Second Schedule to the Indian Limitation Act (IX of 1908), and that the period should be computed, so far as costs are concerned, from the completion of the partition.

**SECTIONS 46 and 48.**

Evidentiary value of entries in record: proof of regularity of proceedings.

**59. C. W. N. XIII, page 93, Janaki Debi versus Kirtinath Roy.**—Entries in *batwara* papers as to the amount of the rents payable by tenants are evidence, in the same way as entries in a record-of-rights prepared under Chapter X of the Bengal Tenancy Act are evidence under section 103 B of the Bengal Tenancy Act, though they may not be very valuable evidence. Absence of the certificate of local publication was not sufficient to show that there was no local publication. A presumption should be made of the regularity of the proceedings of an officer conducting a partition.

**SECTIONS 49 and 50.**

(See also ruling 33.)

When former survey adopted, revision is necessary.

**60. Board's proceedings No. 332 A., dated the 10th July 1894.**—Partition was ordered to proceed on measurement and classification which took place 30 years ago. Objections were taken to such partition on the ground of alluvion and diluvion, and that cultivable lands became useless and bad lands improved. The Board held that it was undoubtedly the duty of the *batwara* officer to mark off the alluvion and diluvion and other changes which might have taken place. For the classification some revision of the recorded condition of lands thirty years ago was obviously necessary, and appellant had grounds for objecting to the proceedings, which did not include such revision.

**SECTION 57.**

Revenue authorities bound by Civil Court's decision regarding title and possession.

**61. Board's appeal No. 23 of 1908 (E. B. & A.), file No. 25 of 1908.**—The Civil Court declared petitioner's title and possession in certain plots of land, setting aside the decision of the Board previously passed under section 88 of the Act. An objection was presented to the Collector

praying that final orders should not be passed until an appeal pending before the High Court was disposed of. The Collector ordered that no proceedings could be stayed merely because an appeal was pending; the plots would be excluded from the present proceedings, and could again be included, should the High Court set aside the decision of the Lower Courts. The Board on appeal ruled that the revenue authorities were bound by the orders of the Civil Court, and the order passed by the Collector was correct.

## SECTION 58.

**62.** *Board's proceedings of 14th May 1881, No. 155, file 493.*—A Deputy Collector in the exercise of executive functions, is in the fullest sense the assistant and agent for carrying out the views of the Collector, and over his proceedings the Collector is bound to exercise the closest superintendence and to interfere whenever he thinks proper to do so. The relative positions of the Collector and his Deputy are entirely different from those of a Collector and Commissioner, or those of the Commissioner and the Board.

Position of  
Deputy Collector.

## SECTION 62.

**63.** *18 W. R. 461, Aftaboodeen versus Shumsodeen Mullick.*—Each party to a *batwara* need not have the same quantity of land, nor should the land awarded be always in exact proportion to the *jama* paid. The object of the *batwara* being to divide the lands in as compact a form as possible, one party may have to pay the *jama* on a smaller area than another, though on more valuable land.

Partition need  
not be based  
entirely on area.

## SECTION 63.

**64.** *18 W. R. 498, Summun Jha versus Bhoopul Jha.*—Where a party concerned objects in appeal to a partition of land fairly allotted according to value, as not having consulted convenience, it is not enough to show that appellant's own convenience would have been better consulted by a different arrangement. He is bound to show some arrangement which would better satisfy all parties and be more equitable to all.

Convenience of  
one party alone  
cannot be  
considered.

**65.** *Board's No. 320 A., dated the 1st August 1889.*—The claim for contiguity applies only to lands within the estate under partition. It is therefore not proper and valid to allot such lands to a proprietor because they are contiguous to his lands of another village in another estate.

Contiguity to be  
considered only  
within the estate  
under partition.

## SECTION 72.

**66.** *Board's proceedings of 20th January 1900, No 373, file 20 of 1900.*—The Board has ruled that under this section the Deputy Collector has only power to direct

Lots may  
ordinarily be  
drawn for shares  
as framed.

that lots be drawn for entire shares as framed by him, and not for parts of the estates. He may allow lots to be drawn for parts of the estates with the assent of proprietors only.

## SECTION 81.

Greatest care to be observed in splitting up tenancies.

**67.** *Board's proceedings, serial No. 9, file 16 of 1909.*

—(i) It has come to the notice of the Board that the provisions of section 81 of the Estates Partition Act V (Bengal) of 1897, are frequently or generally ignored in partition proceedings. The section requires (1) that tenures and holdings shall not, without good reason, be split up for the purpose of a partition; (2) that when a tenure or holding is split up, the existing rent must not be altered but must be apportioned; (3) that the Deputy Collector must cause a notice to be served on tenants concerned and only after hearing their objections, if any, may order that the tenure or holding shall be split up and that the rent thereof shall be apportioned; (4) that the Deputy Collector must notify the apportioned rents to the tenants concerned.

This matter was discussed at the conference of Commissioners held in October 1909, and it was agreed that the provisions of section 81, and more particularly of sub-section (4), should be exactly complied with in future.

(ii) The Board believe that all over the province holdings ordinarily consists of fields, high land and low land and sometimes other classes, scattered over the lands of the village, and that an attempt to create separate estates by making aggregations of holdings in a village would not only be a scheme of work contrary to general (if not universal) practice in *batwaras*, but that it would be incompatible with the canon of compactness for the separate estates which is laid down in section 62 of the Act. Such a scheme of work might produce greater disadvantages than any which are consequent from division of holdings with equitable apportionment of the rent.

One of the objects of the Act of 1897, however, was to check the illegal enhancements of rent which enquiries showed to have frequently followed partitions. The Board are informed that such illegal enhancements are still frequently made after partitions.

(iii) The Board accordingly direct that full effect must be given to the provisions of sub-sections (2) to (4) above cited which require preliminary notice to tenants of intended apportionment of lands and rent of tenures, or holdings, consideration of objections, careful apportionment of rents and notice of apportionment actually made.

## SECTION 82.

**68.** *Board's proceedings of 23rd March 1895, No. 371, file 16 of 1895.—Of section 110, Act VIII (B. C.) of 1876.* While rejecting an appeal in a partition case on the ground of its being out of time, a Commissioner observed:—

Claims regarding rent-free lands must be taken up at any stage.

"The partition has been approved under section 81 of Act VIII (B. C.) of 1876, and no questions with regard to rent-free lands can now be considered. It is impossible to take action under section 110 of the said Act [section 82, Act V (B. C.) of 1897] at this stage without upsetting proceedings which have become final and interfering with the allotment of the lands already made."

The Board, however, held that any matter under section 110 [section 82 of Act V (B. C.) of 1897] of the Act not only should be, but must be, taken up at any stage.

**69.** *Board's proceedings No. 158 A, dated 17th March 1897.*—Section 82 does not apply where only a fractional part of specific land is held rent-free.

For exclusion the land must be wholly rent-free.

## SECTION 83.

**70.** *C. W. N. XV, page 45 Janaki Nath Chaudhuri and others versus Kali Narayan Roy Chaudhuri.*—The section applies only to permanent tenures the existence of which is admitted by all the recorded proprietors and has no application where this is denied by any one of them.

Section 83 applicable only to admitted permanent tenures.

**71.** *Board's proceedings No. 377 A. of September 1889.*—No tenure the existence of which is not admitted by all the recorded proprietors as having been created by them all can be recognized in making a partition. The lands comprised in such tenures must for the purposes of partition be regarded as being ordinary raiyati lands and allotted accordingly.

Tenures, not admitted, to be treated as raiyati lands.

**72.** *Board's proceedings of 12th September 1896, No. 277, file 61 of 1896.—Of section 111, Act VIII (B. C.) of 1876.*—When a mukarrari tenure appertaining to any particular estate or estates under partition is created by some and not all of the proprietors, the just and fair principle to be observed in such a case would be to assign the mukarrari lands to those proprietors only who created the tenure or to their successors in title in proportion to their several interests.

Permanent tenure created by some proprietors to be assigned to them.

**73.** *Board's proceedings, serial No. 4, file 55 of 1907.*—An estate under partition comprised villages held on patni tenures. The local officers agreed that there should be no survey of the villages given out in patni; and the Commissioner directed that the case should be dealt with under section 83 (1), (b), and that the Deputy Collector should also follow the instruction given in section 83 (3). In appeal against the orders of the local officers, the Board

Lands must be surveyed before permanent tenures are excluded. Section 83 to be applied in the most equitable manner.

were asked to exercise their revisional powers under section 114 (1) of the Act. The contentions before the Board were (1) that sections 45 and 49 of the Act give no authority to dispense with a survey in such a case; and (2), that the provisions of section 83 have no application because the villages were not given in patni created by all the proprietors of the estate or admitted by all the proprietors to have been so created.

The Board found nothing in sections 45 and 49 allowing the Deputy Collector to dispense with survey and record-of-rights merely because kabuliyats showing rents settled with patnidars are produced, but without measurement papers or rent rolls. Broadly, it may be stated that the Act of 1897 requires that measurement and record of rents in detail must have been made, either expressly for the purpose of the partition, or prior to the partition, and that the measurement papers and rent-rolls must be verified on the spot before partition of rents and other assets is made among the proprietors. Detailed measurement and record of rents have been made incidental to partition proceedings for the protection of tenants. Nor is there any thing in section 83 of the Act which relieves the Deputy Collector from the duties prescribed in sections 45 and 49. On the contrary, the section makes it necessary that the Deputy Collector should ascertain the extent of the land included in the patni tenure. The Board, therefore, directed that detailed survey and record of rents and other assets should be made of the lands given in patni as well as of other lands.

As regards the second matter in contention, the Board held that if among the proprietors of an estate held in common tenancy, *some* only have given their share in patni, the provisions of section 83 do not apply. Section 99 of the Act expressly provides for such a case. The question is whether a case is within the scope of section 83 when all the proprietors have given out their rights in patni but not in *joint* patni. On the one hand, it is argued that the word "joint" is not prefixed to "pathi" in the first sub-section of section 83, and on the other hand, it is contended that the whole tenor of the section implies existence of a joint patni and especially that sub-section (2) implies adjustment of a single rent and not of two distinct rents.

It appeared in this case that separate patni settlements had been made by the proprietors of their interest in most of the patni villages. The consideration taken was not the same and the rents reserved differed.

It did not appear to the Board to be necessary to come to an absolute decision whether the provisions of section 83 do or do not apply to a case where the entire proprietary rights have been given out in patni, though not by a joint

patni, because, even though the section may not technically be applicable, the principles indicated in the section may still be suitable and indeed the best that can be indicated for dealing with the circumstances of the present case. If assignment of lands or assets of the patni villages be made on equitable principles, the Board would not be disposed to exercise their revisional jurisdiction merely to correct a technicality in such a case.

The Board considered it desirable that a free hand should be left to the Deputy Collector in dealing with the lands and assets of the patni villages. They, therefore, set aside that part of the Commissioner's order which required the Deputy Collector to proceed only under section 83 (1) (b) and they left it to him to apply the principles of section 83 in such a manner as might appear to him to be legal, or equitable and proper.

#### SECTION 84.

**74.** *I. L. R. Calcutta, XXII, page 286, Lata Singh versus Queen Empress.*—A *batwara* amin in proceeding to measure certain lands in the course of proceedings connected with the partition of an estate under Bengal Act VIII of 1876 was obstructed by certain persons who claimed the lands and objected to their being measured. The lands were stated in the report of the amin to be common to the estate under partition and certain other estates. The persons who obstructed him were not co-sharers of the estate under partition and contended that the land sought to be measured had been divided amongst the *maliks* of the different estates. *Held* that section 112 (corresponding to section 84 of the present Act) is limited to cases where the community of interest in the land in dispute between proprietors of the estate under partition as a body and the proprietors of other estates is admitted; when this is not admitted the provisions of section 116 (section 88 of present Act) apply.

Community of interest must be admitted by all parties.

**75.** *Board's proceedings of 20th February 1886, No. 97, file 630.*—*Cf. section 112, Act VIII (B. C.) of 1876.*—An application having been made for the partition of an estate, a portion of the assets of which consisted of a fractional interest in the rents of a mauza which was held in common with four other estates in the Collector's register, it was considered by the Board that this section did not cover the case.

Where fractional interest of rent of mauza held in common, section 84 not applicable.

**76.** *Board's proceedings of 8th January 1887, No. 228, file 228.*—Until the Collector has declared the extent of interest which the proprietors of the parent estate are supposed to have in all the common lands of the several estates, no proceedings can be carried out under this section.

Extent of interest must be declared before action is taken under this section.



Section 84 not applicable where lands of estate are common with lakhiraj land.

**77. Board's proceedings of 19th April 1890, No. 71, file 10 of 1890.**—The lands of an estate were mixed up with the lands of a rent-free holding. The estate having come under partition, a question arose how the Collector should carry on the partition. The matter having been referred to the Legal Remembrancer, that officer gave as his opinion the following:—The word "estate" is distinctly defined in the Partition Act, and that definition must prevail wherever the word occurs through the Act. The Collector has no jurisdiction to partition *lakhiraj* lands, that is work for the Civil Court. He cannot therefore in any way bind the *lakhirajdars* to perform the first duty imposed by section 112, i. e., of Act VIII (B. C.) of 1876, namely, to portion off the proportion of the joint lauds which would be properly coming within the estate he is partitioning. If the *lakhirajdar* himself in an effectual manner broke up the joint holding and abandon to the estate the exclusive possession of a definite area which the estate accepted, then the portion so falling exclusively within the estate might be partitioned by the Collector among the owners of the estate. But otherwise the Collector cannot interfere with the joint lands.

Sole possession by one estate does not override joint possession as shown in the *thak* map.

**78. Board's proceedings, of 7th April 1898, No. 171, file 95 of 1896.**—In the *thak* papers certain villages were shown to belong to two estates, but at the time of the partition proceedings it was found that the cultivated area of these villages was in the exclusive possession of the proprietors of one estate only, who claimed that the villages should be for this reason excluded from the partition proceedings. A reference to the *thak* map and proceedings indicated that these villages had been dealt with at the time as lands common to both the estate. The Board decided that the sole possession of one proprietor did not preclude the Deputy Collector from treating the lands as common lands, to which such exclusive possession gave no right, and held that, although as a matter of equity and convenience, the lands held by one proprietor in his sole possession may be sometimes allotted to him in the partition proceedings, this should not be done in disregard of the rights of co-sharers.

#### SECTION 86.

Allotment must be confirmed by Commissioner before or at time of allotment of lands of estate under partition.

**79. Board's proceedings, serial No. 4, file 29 of 1908.**—In a partition case, the Commissioner held that the Collector's proceedings under section 86 have not to be submitted for approval or confirmation to higher authority. The case having come up to the Board on appeal, it was contended on behalf of the appellants that proceedings under sections 84 and 86 must be confirmed by the

Commissioner before the Deputy Collector, or Collector proceeds to allot lands between the proprietors of an estate under partition. The Board were not prepared to accept this contention; but looking to the wording\* of section 84 of the Act, they held that allotment of lands as between two estates must be confirmed by the Commissioner either previous to, or *simultaneously with*, allotment of lands of an estate under partition.

\* "All the provisions of this Act ..... shall, as far as possible, apply to the allotment, etc."

#### SECTION 88.

(See also ruling 74.)

80. *Board's appeal No. 208 of 1889-90.*—If any objection is made under this section for a very small area, the partition cannot be struck off, but should be allowed to proceed by excluding the lands claimed.

Small disputed areas to be "excluded."

81. *Board's proceedings, serial No. 4, file 15 of 1904.*—A considerable quantity of land had been left as common from the time the first splitting up of a certain original estate commenced. This estate in 1864 was divided into two, viz., No. 2411, comprising 11½ annas and No. 2426 comprising 4½ annas, leaving over 100 bighas as lands held in common.

Where undoubted dispute exists, common lands should be left joint.

No. 2426 was again partitioned into several smaller ones but no attempt was made to allot the common lands. Similarly, estate No. 2411 (11½ annas) underwent further subdivision and comprised 49 estates, one of which, No. 2552, was created in 1896, and obtained its proportionate share of common lands. This appeared to be the only estate out of the many into which the parent estate had been partitioned that got its share of common lands.

Estate No. 2547 (formed out of No. 2411) then came under partition. It appeared that the cadastral survey of the district had taken place since the last partition in 1896. In the course of that survey, (a) some plots of the common lands were erroneously included in other mauzas; and (b) other plots were comprised in some of the estates formed out of the parent estate to which the estate under partition belonged.

The case having come up to the Board on appeal, the following judgment was delivered:—

"As regards (a), the only remedy lies in the Civil Court, and until the lands can be recovered, they must be regarded to have passed out of the estate in question. But as regards (b), it is contended on behalf of appellant that enquiry should be made under section 84 and subsequent sections, and the common lands thus wrongly included in other estates be separated from them and treated as com-

"It seems to the Board that there is much force in this contention. The lands in question appear to be easily traceable, and if it can be shown that these really formed part of the common lands, the Collector can act under section 88 and bring them under partition. On the other hand if appellant fails to substantiate his claim the lands in dispute may be left out of account. There is another and a simpler alternative which the Collector can adopt. As a portion of the common lands is undoubtedly in dispute the whole of such lands, including those shown in the survey papers as appertaining to the estate under partition, may still be left as common and not brought under partition."

Enquiry must be confirmed to fact of possession.

**82.** *Board's proceedings, serial No. 4, file 21 of 1905.*

—Section 88 lays sole stress on the question of possession. This is the one question into which the Deputy Collector must enquire, and though reference is made to claim to right in the land in clauses (b) and (c) of the section, yet it is obvious that what is evidently intended is that the enquiry should be confined to the fact of possession and if any of the lands is found to be out of the possession of the proprietors of the estate under partition, such lands should on no account be included in the partition.

Cases should not be struck off, if possession proved only over part of land in dispute, unless area in dispute is extensive.

**83.** *Board's proceedings of 14th March 1885, No. 399, file 1672.—Cf. section 116, Act VIII (B.C.) of 1876.*

—While the partition proceedings of an estate were in progress, an objection was raised by the owner of another estate that his lands were included in the measurement of the estate under partition. Thereupon the Deputy Collector held a local enquiry, and it was found that the proprietors were in possession of a portion only of the lands claimed by the objectors, and that the objectors were in possession of the rest of the land under objection. The Commissioner in appeal considered that the claims of the objectors could therefore not be said to have been wholly untenable, and held that the Collector had no option but to strike the case off the file. The construction which the Commissioner had put on this section was one in which the Board found themselves unable to concur. They observed that the object of this section was to provide a procedure in cases where there was a dispute as to whether any lands formed part of the parent estate. Clause (1) provides for local enquiry by a Deputy Collector as to possession; clause (2) empowers the Collector in cases where he thought fit to do so to order the partition to be struck off the file quite irrespective of the question whether possession be with the proprietor of the parent estate or not; clause (3) gives the Collector the alternative power in cases where he shall find that possession of the disputed land is with the proprietor, and that the claim of other parties to the right is untenable, to order the partition to proceed. The Board held that the fact that possession of only some of the lands

claimed might be given to the proprietors did not affect the question in any way. The Board, therefore held that the construction put by the Commissioner on clause (3) of this section was an erroneous one. They, however, in consideration of the numerous disputes existing as to the lands which formed part of the estate, ordered under the second clause of this section that the partition should be struck off the file.

**84. Board's proceedings No. 526 A of December 1880.**—Rights of easement are not affected by partition. Mere possession in the exercise of a right of easement cannot therefore be a ground for objection, unless the claimant can show that the lands appertain to his estates. Easements not affected by partition.

**85. Board's proceedings of 9th September 1899, No. 86, file 72 of 1899.**—*Cf. section 116, Act VIII (B.C.) of 1876.*—There is no appeal to the Board from an order passed by the Commissioner under this section, but any person aggrieved by such order has his remedy in the Civil Court as laid down in section 150. No appeal to Board from order of Commissioner under section 86.

**86. Board's proceedings of 1st June 1901, No. 70, file 64 of 1901**—A preliminary objection was taken by the pleader for the respondents in an appeal before the Board that no appeal lies to them against an order under section 88, Act V (B.C.) of 1897. The Board ruled that they have power of revision under section 114(i) and overruled the objection. Board can exercise power of revision under section 114 (i).

**87. Board's proceedings serial No. 6, file 85 of 1907**—On an appeal being preferred to the Board against the order of the Commissioner regarding the treatment of certain lands under section 88 of the Act, the Board found that no appeal lies against an order passed by the Commissioner in the case of a dispute coming under this section. It was argued for the appellant that an order excluding or including land in a parent estate passed by a Commissioner must be held to come under head (c) of section 113, that is, must be held to be a part of the Commissioner's proceedings confirming or amending a partition. But the Board did not think this argument sound. They remarked :— Revisional powers not exercisable to the extent of an appeal.

“ It is to be noticed that whereas section 112 (i) expressly gives appellate jurisdiction to the Commissioner in such cases, no mention is made of them in sections 113 and 114 which give the Board appellate jurisdiction. It remains to consider whether, though the Board have not appellate jurisdiction, they may have revisional jurisdiction in such cases.”

On the merits of the case, the Board were not prepared to exercise revisional powers. In the circumstances found they doubted whether either the Collector's order exactly satisfied the requirements of section 88 (c), or the Commissioner's order the requirements of section 88 (b). But the

Board were not inclined to disagree with the Commissioner's finding that the disputed lands fell within the original ambit of the parent estate. Any persons aggrieved by this finding have a remedy in the Civil Court under section 119 of the Act. They directed that if the lands be held without payment of rent to the proprietors of the parent estate, the Deputy Collector should deal with them under section 82 of the Act.

## SECTION 94.

Sharer entitled to be put in possession.

**88. Board's appeal No. 301 of 1888-89.**—The Board has decided that a share of an estate, the partition of which has been confirmed is entitled to be placed in possession of the lands included in the partition as demarcated and shown in the map and measurement papers and assigned to his share.

Omission to carry out orders may be rectified when possession is delivered.

**89. Board's proceedings No. 1039A of December 1891.**—If an order has been passed, but by an oversight it is not carried out and the partition confirmed by Commissioner the matter can be looked into at the time of delivery of possession by the Collector.

## SECTION 99.

Incumbrance in joint estates by one co-sharer not binding on other co-sharers on partition.

**90. I. L. R. XXVI Calcutta 435, Joy Sankari Gupta versus Bharat Chandra Bardhan.**—On partition by the Collector under the Estates Partition Act, when any land of an undivided joint estate, which was encumbered by any co-sharer, is allotted to any other co-sharer, the latter takes it free from the incumbrance so created.

Tenures in lands held in severalty not subject to cancellation on allotment in partition proceedings.

**91. C. L. J XXI, page 605, Nagendra Mohan Roy and others versus Piyari Mohan Saha and others.**—Section 99 applies only where the lands are held jointly by the proprietors and not in severalty in pursuance of a private arrangement between the parties.

Certain lands included in a revenue-paying estate were owned by members of an undivided family. Defendants held them as a tenure under the co-sharers to whose exclusive share they had been assigned by private partition. Thereafter as a partition of the entire estates by the Collector under the Partition Act, those lands were allotted to the plaintiffs.

Held that as the lands were under private arrangement held in severalty and not in tenancy in common, the plaintiff took them subject to the tenure of the defendant.

Particulars of lands held in severalty not affected by partition proceedings.

**92. I. L. R. XX Calcutta 286, Hriday Nath Saha and another versus Mahabataressa Bibi and others.**—Plaintiffs were co-sharers in an estate, T being another co-sharer. In 1818 a private partition took place between the co-sharers, in which certain specific lands were allotted to T.

in severalty, the rest remaining undivided. T granted a patni lease of her share to third parties, who were thenceforth in possession, and subsequently there was a partition of the whole estate by the Collector, in which the specific lands allotted to T in the private partition were allotted to plaintiff, who brought against the tenants of the lands suits for rent, to which they made the patnidars parties.

*Held* that assuming that the patnidars were not parties to the partition proceedings they were entitled to retain possession of the lands allotted to their lessor T in the private partition, by which partition the plaintiffs were bound, notwithstanding a subsequent partition by the Collector.

**93.** *C. W. N. XV, page 426, Syed Abdul Latif versus Amanaddi Patwari.*—Section 99 of Act V of 1897 does not apply when the estate partitioned by the Collector had already been privately partitioned amongst the proprietors and the proprietors were holding their shares of the lands in severalty and not in common tenancy, as contemplated in that section. A patnidar in possession of a separately allotted portion of such estate is not therefore affected by the subsequent partition by the Collector. The fact that Government was not bound to recognise the private partition for purposes of revenue does not affect the question.

Section 99 not applicable to lands held in severalty.

**94.** *VI. C. L. J. 49, Hakim Lal and another versus Ram Lal and others.*—The mortgagee of an undivided share in joint property is entitled only to property allotted on partition to the mortgagor, if the partition was fair and equal and is not vitiated by fraud, and he is entitled to proceed against what may be called, the substituted security.

Mortgagee entitled to proceed against substituted property of mortgagor.

**95.** *XI. C. L. J. 136, Tilak Singh and others versus Jalal Singh and others.*—A usufructuary mortgagee is entitled to sue for mortgage money, when he has been dispossessed from the mortgaged property by a co-sharer of the mortgagor, who obtained the same on partition, and section 99 has no application to a case of this description, as what the mortgagor gave was not his share or fraction of his share but certain definite and specific lands, marked by metes and bounds.

Mortgagee entitled to sue for mortgage money when dispossessed from mortgaged lands by partition.

**96.** *XXI. C. L. J. 599, Rajani Nath Saha and others versus Dines Chandra Neogi.*—A sale of *khamar* land by one co-sharer to another with a condition for the payment of Government revenue by the vendee to the vendor is an anomalous burden and not an encumbrance, and if the vendee did not get himself registered, the *batwara* authorities cannot take any notice of the interest claimed by the

Sale of *khamar* land subject to reservation of revenue not an encumbrance.

vendee. If the land purchased by the vendee was given to other co-sharers, the vendee is entitled to get equivalent land from his vendor or his legal representative.

**SECTION. 107.**

**Power of  
Collector to  
remit fines.**

**97. Board's Proceedings Serial No. 6, File 60 of 1906.**—A question having arisen whether a Collector can remit fines imposed by himself under this section, it has been ruled that there is no objection to the Collector's remitting fines which he has imposed, or was competent to impose, under the said section, and which have not been levied, but this permission does not extend to fines which require the sanction of the Commissioner to their levy, nor does it authorise the refunding of fines already levied. It should be distinctly understood that only the Collector and not the Deputy Collector can remit fines.

**SECTION 108.**

**Stamp duties  
not realisable  
as public  
demand.**

**98. Board's Proceedings, Files 34 of 1905, 50 of 1906 and 8 of 1907.**—This section provides specially for the realization of costs, ordered under this Act to be paid: but it does not apply to stamp duties on partition deeds, which are neither leviable under this Act nor under the Public Demands Recovery Act of 1895. The difficulty with regard to recovery of stamp duties payable on partition deeds will be considered when the Estates Partition Act next comes under amendment.

**SECTION 111.**

**Collector cannot  
review case  
struck off by  
predecessor.**

**99. Board's appeal No. 180 of 1894 dated July 1895.**—The Collector has no power to review a case struck off by his predecessor.

**SECTION 113.**

(See also rulings 85—87).

**No appeal to  
Board against  
order under  
section 88.**

**100. Board's Proceedings of 30th July 1887, No. 80, File 251.**—There is no appeal as of right to the Board from an order of the Commissioner against an order of the Collector under section 88 of the Act as to disputes or doubts regarding land.

**101.** *Board's Proceedings of 9th September 1899, No. 86, File 72 of 1899.*—The words "putting an end to the proceedings for effecting a partition after the application has been admitted" used in section 113 (a) refer to section 34 of the Act. Reference to section 34.

#### SECTION 114.

**102.** *Board's Proceedings of 4th August 1901, No. 169, File 10 of 1901.*—It has been held by the Board that the second sentence of sub-section (1) of section 114 of Act V (B. C.) of 1897 gives a revisional jurisdiction to the Board, not in respect of *all* orders under the Act, but only in respect of the orders of the kind mentioned in the first sentence. The provisions of section 145 of Act VIII (B.C.) of 1876, giving *general* powers of supervision and control to the Board, have not been reproduced in the present Act. Limitation of Board's power of revision.

**103.** *Board's Proceedings Serial No. 6, File 85 of 1907.*—Revisional jurisdiction is given to the Board under the last sentence of section 114 (1). In the opinion of the Board, the revisional jurisdiction is intended to apply to all cases other than those specified in sections 113 and 114 (2) in which appellate jurisdiction is given. It would, they think, be incongruous to hold that revisional jurisdiction is given where there is concurrence between the Collector and Commissioner and disallowed where there is divergence. Revisional powers of Board depend on wording of section 114 (1).

**104.** *Board's Proceedings, Serial No. 4, File 83 of 1904.*—The partition proceedings of an estate were confirmed by the Commissioner (in 1902) under section 118 of Act VIII (B. C.) of 1876. When the amin went to deliver possession, it was discovered that the batwara maps were greatly at variance with existing facts and with the papers prepared in the course of the general survey and settlement of the district. The Collector, after careful enquiry, was satisfied that it was not possible to give possession on the basis of the batwara papers and it also appeared to him that as regards some, at any rate, of the estates created by the partition, the Government revenue was in danger. Accordingly he recommended to the Commissioner that the Board should be moved to direct a revision of the proceedings. After prolonged correspondence between the Collector and the Commissioner, the Commissioner decided that the amin should give possession under the batwara maps so far as it could be given. In revision under section 114 Board can direct revision of whole proceedings.

The case having come up on appeal, the Board found that the proceedings were governed by the provisions of the Act. They observed as follows:—"Section 145 of the old Act, VIII (B. C.) of 1876, is much wider in scope and gives much greater plenary powers of revision and control than the corresponding section 114 of the present Act. It is abundantly clear that under section 145



of the old Act, the Board have full power to interfere in a case like the present."

The Board held that the fact that there was risk to the revenue along with the impossibility of delivering possession according to the batwara maps and the important and vital changes which the villages apparently had undergone since the batwara measurements took place and which had been brought to prominence in the late revenue survey made it expedient that the proceedings should be revised with a view to assigning to each estate a fair share of the assets as they subsequently existed and to making a more equitable re-apportionment of the burden of Government revenue. The Board accordingly set aside the Commissioner's order appealed against and also the batwara proceedings under the old Act and directed that they should be gone through afresh under the provisions of the Bengal Act V of 1897.

#### SECTION 116.

Delivery of possession to be based on reasonable interpretation of partition.

**105.** *Board's Proceedings of 27th March 1886, No. 46, File 1485.*—At the time of giving possession the amin proceeded to divide the trees standing on the estate among the several proprietors, whereupon an objection was raised by certain sharers to the effect that the trees standing on their plot should be left entirely in their sole possession, as they should go with the lands on which they sued. The Deputy Collector held that the value of the trees had not been included in the assets of the land according to the practice there in vogue, and that they should therefore be separately divided among the parties. The Collector confirmed this order, dismissing the appeal. Against the above order an appeal was preferred to the Commissioner, who decreed it on the ground that it would be impossible to put one proprietor in possession of a certain plot of land, and to put other proprietors in possession of different trees which were growing upon that plot of land. On appeal this view was upheld by the Board as in accordance with fairness and common sense.

#### SECTION 117.

Pleader's fees to be based on fees prescribed under Legal Practitioners' Act.

**106.** *Board's Proceedings of 19th May 1883, No. 32, File 221.*—A pleader, who was engaged in a partition case, having taken 20 years' purchase as the valuation of his claim or his fee, the question how the valuation should be made in partition cases in revenue offices was referred to the Board, who pointed out that in partition proceedings before Revenue officers in calculating such fees the rules prescribed by the Board under the Legal Practitioners' Act, XVIII of 1879, should be observed.

SECTION 119.

**107. XXIV, I. L. R. Calcutta, 150, Laloo Singh versus Purna Chandra Banerjee.**—A suit for possession of lands of which the owner have been dispossessed in pursuance of an order of the Collector under section 88 will lie, even though no suit is brought to set aside the Collector's order under section 119.

Action under section 119 not necessary to establish right to possession.

**108. XV, C. W. N. 45, Janki Nath Choudhuri and others versus Kali Narayan Roy Chaudhuri.**—The object of section 119 is to exclude the jurisdiction of the Civil Courts in cases where the question relates to the determination of Government revenue or to the details of partition; it does not oust the jurisdiction of the Civil Court in matters which involve a question of title.

Civil Court jurisdiction only barred where petty details of Government revenue involved.

**109. XVI, C. W. N. 439, Lakhi Chaudhuri and another versus Aklu Ojha and others.**—Where in the course of partition proceedings before the Collector, the defendants set up a claim that they were tenants in respect of that land, to which the plaintiffs who were of the joint proprietors objected was overruled by Collector:—

Section 119 does not bar suits regarding declaration of tenants' rights.

“ Held that a suit by the plaintiffs for a declaration that there was no tenancy right of the defendants were not barred.”



## APPENDICES.

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### B



**APPENDIX A****I. Registers and Statements.****FORM I.****Register I Cash-Book of Partition Fees.**

[See Instruction 30.]

RECEIPT.								DISBURSEMENT.							
Date.	Number of chalan.	Received from—	On account of—	Amount	Date of posting in Ledger.	Deputy Collector's initials.	Date.	Number of cheque.	In favour of—	On account of—	Amount.	Payment from Treasury.	Date of—	Posting in Ledger.	Deputy Collector's initials.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
				Rs.	A.	P.					Rs.	A.	P.		

NOTE.—The page of the Estates Ledger should be quoted in columns 6 and 14 as a denominator under the date of posting.

**FORM 2.****Register III.****LEDGER OF PARTITION FEES.**

[See Instruction 30.]

Estate No.                      Date of sanction of estimate.

Estimated cost,	Rs.	
1st instalment,	"	due
2nd        "	"	"
3rd        "	"	"

EXPENDITURE.			RECEIPTS.		Amount.
Date.	On account of—	Amount.	Date.	From	
1	2	3	4	5	6
		Rs. A. P.			Rs. A. P.

**[See Instruction 30.]**

### LEDGER OF STAMP FEES.

Estate \_\_\_\_\_ No. \_\_\_\_\_,

Rs.    A.    P.

Total assets	...	...	...
Deduct Government revenue and allowances of 10 per cent. for collection expenses and 3 per cent. for the landlord's share of the cess	...	...	...

	Net profit	...
Market-value of net profit at 20 years' purchase		
Total stamp-fees		...

Serial No.	Name of proprietor.	Extent of interest.	Share of stamp fees.	COLLECTIONS.				Total.	REMARKS.
				Date.	Chalan No.	From whom received.	Amount.		
1	2	3	4	5	6	7	8	9	10
			Rs. A. P.				Rs. A. P.	Rs. A. P.	

Total Collections	...	...	...
Cheque drawn for stamp duty	...	...	...
Stamp purchased on	...	...	...
Stamp affixed on record on	...	...	...

*Signature of Deputy Collector.*

## FORM 4.

## Register V.

[See Instruction 30.]

## PROPRIETOR'S LEDGER OF PARTITION FEES.

Proprietor's No.

Estate No.

	Amount of instalment.			When due.	COLLECTION.			REMARKS.	
					Date.	From whom received.	Amount.		
1	2			3	4	5	6	7	
	Rs.	A.	P.				Rs.	A.	P.
First ... ..									
Second ... ..									
Third ... ..									
Total Collections									
Share of actual expenditure ( <i>vide</i> apportionment Statement A).									
Excess ... ..									
Deficit ... ..									

NOTE.—The date of issue of post-card notice of demand should be inserted in the remarks column.

As many pages of this ledger should be opened for each estate as there are recorded proprietors or groups of proprietors having a common interest. A sufficient number of pages should also be left blank after each estate so that the proprietors of the same estate be not entered in different volumes.

NOTE 2.—The date of issue of certificates and serial number in the Requisition Register (Register 9, Register and Return Manual, 1919) should also be noted in the remarks column of this ledger.





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### Register VIII.

Estate No.

## BILL BOOK OF AMINS.

[illegible]

**Register IX.**

TRAVELLING ALLOWANCE BILL BOOK.

[illegible]

**FORM 9.**

[See Instruction 30.]

**Apportionment Statement A.**

Estate No.		Actual expenditure Rs.
Estimated cost	Rs.	
First instalment	"	
Second do.	"	
Third do.	"	

PROPRIETOR'S			Total.	SHARE OF ESTIMATED COST.						Share of actual expenditure.
Name and address and reference to Register V.	Num-ber.	Share in estab-.		1st instal-ment.		2nd instal-ment.		3rd instal-ment.		
1	2	3	4	5		6		7		8
			Rs.	A. P.	Rs.	A. P.	Rs.	A. P.	Rs.	A. P.

**FORM 10.**

[See Instruction 30.]

**Apportionment Statement B.**

			Rs. A. P.
Total of column 10, Register VI	...	...	
" " " 4, " VII	...	...	
Cost of Commissioner's establishment	...	...	
GRAND TOTAL	...	...	

Number of estate.	Area.	Share of expenditure.		
1	2	3		
		Rs.	A.	P.

FORM 11.

[See Instruction 38.]

*Abstract of the Ledger accounts of each estate under partition in the district for the year ending the 19 .*

NAME OF ESTATE.	Balance on 1st April.	Receipts.	Total.	Payments.	Balance on 31st March.
1	2	3	4	5	6
I.—Disposed of cases—					
Estate No. ... ..					
Estate No. ... ..					
&c., &c. ... ..					
II.—Cases not yet disposed of—					
Estate No. ... ..					
Estate No. ... ..					
&c., &c. ... ..					
Total ...					

I certify that the totals of this abstract have been agreed with the totals of the cash-book and the figures communicated by the Accountant-General, Bengal, and that the balance worked out from this account has been reconciled with the balance shewn in the cash-book.

The 19 . } *Deputy*  
*Sub-Deputy* Collector in charge of Partition.

FORM 12.

[See Instruction 39.]

Return XXVII.

*Partition Fees realised under sections 37 and 42, Act V (B.C.) of 1807, in the district of during the year ending 31st March 19 .*

Total number of estates under partition.	Amount of fees in hand at close of the previous year.	Amount of fees realised during this year.	Total.	Amount disbursed during this year.	Balance (column 4—column 5).	REMARKS.
1	2	3	4	5	6	7

I CERTIFY that the sum of Rupees annas pies entered in column 3 has been credited in the accounts rendered to the Accountant-General, Bengal, during the year under the head "Land Revenue."

The 19 . } Collector.

**FORM No. 13.**

[See Instruction 58.]

*Abstract of the Estates Partition Fund of district* *for the year*  
*prepared as required by section 42, Act V (B.C.) of 1897.*

				Ra.	A.	P.
Balance at credit of the Fund on 1st April	...	...	...	...	...	...
Receipt for the year	...	...	...	...	...	...
Disbursements during the year	...	...	...	...	...	...
Balance at credit on 31st March	...	...	...	...	...	...

**FORM No. 14.**

[See Instruction 67.]

*Estimate of cost of the partition of Estate* *, Pargana* *, bearing*  
*Tauzi No.* *on the Revenue Roll of the district of*

1. Government revenue—
2. Number of mauzas included in the estate { (a) entirely—  
  (b) partially—
3. Whether the estate has been surveyed and a record-of-rights prepared under the orders of Government—
4. Area (if surveyed) or estimated area, in acres—
5. Number of plots (if surveyed)—
6. Number of separate applications for partition—
7. Period likely to be taken up in making a survey and record-of-rents and other assets under sections 45 to 48, or in verification of records under section 49—
8. Total period approximately estimated for completion of proceedings—
9. Number, class and rate of pay of establishment to be employed other than general establishment, and period of employment—
10. Cost—
  - (1) Cost of establishment shown under 9—
  - (2) Estimated contributions towards general establishments employed under sections 36 and 41—
    - (a) District—
    - (b) Divisional—
  - (3) Other expenditure to be incurred (in detail)—
  - (4) Total estimated cost of partition—
11. Remarks as to special circumstances affecting the cost, e.g., whether the estate is in scattered blocks or otherwise in compact, whether (if the estate comprises several mauzas) the applicants for partition are likely to accept allotment according to mauzas as a whole, whether there is much waste land, and the like.

**APPENDIX A—FORMS.**

**121**

**FORM No. 15.**

[ See Instruction 95. ]

*Weekly Progress Report of*                      *for week ending*

Nature of work, e.g., whether demarcation, surveying, preparing map or records, preparing partition paper or final report, or delivering possession.

ESTIMATED AMOUNT TO BE DONE.	Amount previously done.	Done in the period of this report.	Total done.	Balance to be done.	REMARKS.
1	2	3	4	5	6
<i>Eg.—</i>					
Estimated length of boundary ... ..					
Area to survey ...					
Number of plots ...					

**FORM No. 16.**

[ See Instruction 5 ]

*Statement showing the progress made in the disposal of Partition cases in the  
district of    during the quarter ending                      19 ..*

1	2
(1) Number of cases at the beginning of the quarter ... ..	
(2) Institutions during the quarter ...	
(3) Number of cases disposed of during the quarter ... ..	
(4) Number of cases pending at the close of the quarter ... ..	

Certified that I have inspected the entries in Register 2 of all pending cases, and am satisfied that no case is being unduly delayed, with the exceptions mentioned below, in regard to which suitable orders have now been passed.

*The                      19..*

*Partition Officer.*

Number and year of case.	Stage of the case.	REMARKS.
<i>N.B.—To be entered in serial order of year and number, oldest cases being en- tered first, and so on.</i>		
1	2	3

## FORM 17.

[See INSTRUCTION 1.]

*Register No. 2 of proceedings for the partition of estates under Act V  
(B. C.) of 1897.*

*(The first page of Register No. 2 will, on indent, be issued by the Bengal  
Forms Department in loose sheets for use as it may be required (1) for  
pasting into the register and (2) to form a fly-leaf for Batwara records.)*

Case No.                      of year                      Tanzi No.                      Name of Estate  
Government Revenue—Rs.                      As.                      P.                      Area in acres—A.                      R.                      P.  
Name of first applicant for partition.  
Reference to estate ledger, vol.                      , page  
Reference to Stamp Account Ledger.

1. Date of presentation of application to Collector, section 17.
2. Date of Collector's order for partition, section 29.
3. Date or dates of order under section 30, if any.
4. Date of completion of survey and record, section 45.
5. Date of attestation, section 47.
6. Date of distribution of parchas, section 48.
7. Date of adoption of papers, section 50.
8. Date of allotment under section 84.
9. Date of approval, under section 86, of the allotment made under section 84.
10. Date of making partition, section 57.
11. Date of submission of case to Collector, section 58.
12. Date and purport of Collector's order section 58.
13. Date and purport of Collector's order, on appeal, section 111.
14. Date of submission of case to Commissioner, section 61.
15. Date and purport of Commissioner's order on objection, section 61.
16. Date and purport of Commissioner's order on appeal, section 112.
17. Date of confirmation by Commissioner, section 90 or 91.
18. Date and purport of Board's orders in appeal, section 113.
19. Date of giving possession under section 94.
20. Date from which partition has taken effect and separate liability of each new estate has commenced under section 94.
- 20A. If erection of boundary marks be ordered, date of issue of notice assigning such marks to zamindars under section 96 (2).
21. Date of Collector's order, declaring actual total cost under section 40.
22. Date of removal of the case from the file.

NOTE 1.—When there are several instances of appeal under sections 111, 112, and 113 each should be noted as (a), (b), (c) against entries Nos. 12, 16 and 18.

NOTE 2.—If the partition is rejected under section 30 or 32, or if it is quashed by the Commissioner under section 34, or if it has been arranged by arbitration under sections 61 to 66, the fact should be noted against entry No. 2.

NOTE 3.—Column 6 (Number of new estate in part 1 of the General Register) should be properly filled up, after communicating the necessary information to the Land Registration and Tanzi Departments.





FORM 19.

(See Rule 7.)

PARTITION PAPER OF ESTATE  
 TAUZI No. PARGANA DISTRICT  
 Date of confirmation by Commissioner  
 Date from which partition has taken effect and separate liability commenced

Parent Estate

Separate Estate

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Area.	Rental as shown by pro- priators.	Rental as admitted by tenants.	Rental as adopted for pur- poses of partition.	Other assets, if any.	Government revenue.	Serial No.	Names of all proprietors as recorded in the books of revenue, as the apportionment for partition are admitted and shares brought under partition.	Fractional shares in the parent estate of each set of proprietors or villages held in severalty by each or shares in such villages.	The name or names of the recorded proprietor or proprietors of each separate estate.	Specification of lands in- cluded in the separate estate.	Area.	Rental and other assets, if any.	Amount of land revenue assessed on each separate estate.	Tax No.	Any stipulation regarding places of worship, tanks, etc., under Chapter IX.
E. E. D.	E. A. P.	E. A. P.	E. A. P.	E. A. P.	E. A. P.			A. G. C. E.				E. A. P.	E. A. P.		

**FORM 20.**

[See Rule 8.]

**Form of Engagement for Payment of Land Revenue.**

[Section 94(1)(b) of Act V of 1897.]

WHEREAS under the provisions of the Estates Partition Act, V (B.C.) of 1897, estate bearing tauzi No. \_\_\_\_\_ on the tauzi roll of the district of \_\_\_\_\_ has been partitioned, and a separate estate \_\_\_\_\_, bearing tauzi No. \_\_\_\_\_ on the tauzi roll of the district of \_\_\_\_\_ representing \_\_\_\_\_ share of the above estate has been allotted to me, and is now separately liable for the payment of land revenue, I hereby engage to pay the sum of Rs. \_\_\_\_\_ as p. \_\_\_\_\_ as the annual land revenue of the estate\* and agree that (subject to any change in the latest days for the payment of arrears of land revenue duly made by the Board of Revenue under the provisions of section 3 of Act XI of 1859†) it shall be realisable as arrears of land revenue on and after the latest days of payment specified below :—

	Amount.	Latest day of payment of arrears of land revenue.
	Rs. A. P.	
1.	...	
2.	...	
3.	...	
4.	...	
Total	...	

\* For temporarily-settled estates insert here, "until the next re-settlement of land revenue of the estate."

† For temporarily-settled estates insert here, "and until the next re-settlement of land revenue of the estate."

**II.—Notices, applications, etc.****FORM 21.****General Notice.**

(Instruction 15.)

To

All occupants of lands in village \_\_\_\_\_, pargana \_\_\_\_\_ district \_\_\_\_\_, and to all persons dwelling in villages whose boundaries are contiguous with the village, and to all persons employed on, or connected with, the management of, or otherwise interested in, such lands. It is hereby notified and proclaimed that under section 45 of the Partition Act, V (B.C.) of 1897, a survey shall be made and a record of existing rents and other assets of all the lands shall be prepared of estate No. \_\_\_\_\_. This is, therefore, to give notice that the demarcation and survey of the land in the village above stated will commence on the \_\_\_\_\_, and you are hereby called upon to attend, either personally or by agent, on the \_\_\_\_\_ officer engaged to conduct the work at such times and places as shall be stated hereafter in special proclamation to be published in the villages in which the lands to be surveyed lie.

You will then point out the boundaries of all lands belonging to your respective estates, tenures and holdings, and render such aid as may be necessary in setting up or repairing such marks as may be required; and you will afford such assistance and information as may be required of you for the purposes of the Act. You should therefore be prepared to point out all the lands mentioned therein as belonging to your estates, tenures and holdings in each village of which you are in actual possession; and also be prepared to give the necessary information in respect of those which are no longer in your possession.

**FORM 22.**

(See Instruction 15.)

**Notice to Neighbouring Landlords.**

Notice issued by

dated

19 .

To

The landlords and tenants of the undermentioned villages,

Notice is hereby given that amin

has been deputed to demarcate mauza

gana

, district

, par-

gana, district, and the undermentioned villages which border on it, and appear to be in your possession. You are required, therefore, to appear before the amin to point out the boundary of your respective mauzas, estates, and tenures. The amin has no authority to decide any matter in dispute, but merely to ascertain what is disputed. Matters in dispute will be settled afterwards by the Deputy Collectors in charge, or under section 88, Act V (B.C.) of 1897, as the case may be. Possession cannot be disturbed by the amin's demarcation. Marks put down by the amin should not be removed. Herein fail not

**FORM 23.**

(See Instruction 76.)

**Notice to each proprietor with regard to his share of the estimated cost of partition and the instalments in which it is to be paid.**

To

proprietor of Estate

, proprietor, or manager or agent on behalf of the

district

, pargana

, bearing tauzi No.

Notice is hereby given that your share of the cost of partition of the estate mentioned above has been estimated at Rs. As. P.

(Rupees annas and pies only) and that the amount must be paid in the following instalments on or before the dates noted against each, failing which steps will be taken to realize the demand under the Public Demands Recovery Act, 1913.

	Rs.	As.	P.
1st instalment ...		Due on	19 .
2nd " ...		" "	19 .
3rd " ...		" "	19 .

Dated

, the

19 .

Collector.

**FORM 24.**

[See Section 18.]

**Application for partition.**

TO THE COLLECTOR OF

1. Name and residence of applicant.
  2. The name of the parent estate.
  3. The number under which such estate is borne on the revenue-roll, and the land revenue demand for which it is liable.
  4. The number under which such estate is borne on the Collector's General Register of revenue-paying lands.
  5. The name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post-office of the area within which each of the said proprietors resides.
  6. The character and extent of the interest of which each proprietor of the parent estate is in possession.
  7. A specification of any land held by proprietors of the parent estate in common with proprietors of other estates, and of the rights of such proprietors respectively in such land.
  8. The name and address of the proprietors of the estate or estates surrounding the estate which is proposed to be partitioned, the name of the post-office of the area within which each of the said proprietors resides, the name and number of the estates owned by them.
  9. Remarks.
- I do declare that this application under section 18 of Act V (B.C.) of 1897 is correct to the best of my knowledge and belief.

**FORM 25.**

[See Section 19.]

**Notice to produce rent-roll and statement.**

Collector's Office.

To

OF

WHEREAS                      has applied for the partition of his share in estate No.                      named                      of this district under Act V (B.C.) of 1897, and is unable to produce a rent-roll or statements of the rents collected from such estate on behalf of the applicant during each of the three years immediately preceding, as required by section 19 of Act V (B.C.) of 1897, and has stated that you have in your possession the information necessary for the preparation of such rent-roll and statement, you are therefore required to produce such rent-roll and statement on                      the                      day                      of                      19                      Herein fail not

Collector.

**FORM 26.**

[See Section 21.]

**Proceedings on receipt of application.**

IN THE COLLECTORATE.

On the 19 corresponding to 13 Bengali era  
Esq., Collector, present.

Partition of land and separation of revenue of mahal , pargana  
district , under Act V (B.C.) of 1897, on the application of  
applicants for partition of the said mahal , tauzi No.

Whereas it is necessary that a notification should be published and that notices should be served under section 21 of Act V (B.C.) of 1897 before the 19  
it is ordered that copies of the notification with copies of this proceeding be sent to the Judge of and Munsif of , with the request that they will be good enough to order their nazirs to have these notices hung up at their Courts, and will intimate to this Court that they have done so, and that three copies of the notification be made over to the nazir of this Court to be affixed, one on the front of this Court and the second on the mahal to be partitioned, and the third in the zamindari cutcherry of the mahal, and their service reported to this Court and a copy of the notification with a parwana be sent to the police-station where the mahal is situated, that it may be affixed on the police station and a report submitted to that effect before the expiry of the date, and that, under section 21, Act V (B.C.) of 1897, a notice be served by the nazir of this Court on such of the recorded proprietors of the estate as shall not have joined in the application, and on any other proprietor who may have been named in the application, and receipts taken from them and filed in this Court.

**FORM 27.**

[See Section 21.]

**Notification of the application.**

THE COLLECTORATE OF

BE it known that the undermentioned persons have applied for the batwara of mahal No. , pargana . Therefore under this day's order this notification under section 21 of Act V (B.C.) of 1897 is published, and any person claiming any proprietary right in the estate who may object to the partition is invited to state his objection either in person or by duly authorized agent on

Name of applicant

Name of mauza and pargana

No. of tauzi

Extent of share

Dated

Collector.

N.B.—The Collector is to cause copies of this notification to be published in the manner prescribed in section 104.

**FORM 28.**

[See Section 21.]

**Notice to Proprietors.**

THE COLLECTORATE OF

To

BE it known that the undermentioned persons have applied for the batwara of mahal No. , pargana . Therefore under this day's order you are hereby informed, under section 21 of Act V (B.C.) of 1897, that if you have any objection to the share of the applicant, you should state your objection either in person or by duly authorized agent on

Name of applicant  
Name of mauza and pargana  
No. of tauzi  
Extent of share

Date

Collector.

*N.B.*—Copies of this notice are to be served in the manner prescribed by section 108 on each of the recorded proprietors as shall not have joined in the application and on any other proprietor who may have been named in the application.

**FORM 29.**

[See Section 29.]

**Proceedings declaring estate to be under partition.**

IN THE

COLLECTORATE.

WHEREAS has applied for the partition of his share in estate No. name of of this Collectorate and and there is no reason to believe that any obstacle exists to making the partition as applied for, it is therefore directed under section 29 of Act V (B.C.) of 1897 that the application be admitted and the estate declared to be under partition for the purpose of forming and assigning to the applicant a separate estate. The particulars of the extent of interest in the parent estate held by the applicant (or joint applicants) are as follows :—

It is ordered that the lands proportionate to the interest declared to be held by each applicant (or body of joint applicants) shall be formed into a separate estate to be assigned to such applicant (or body of joint applicants) and that lands proportionate to the interests so declared to remain to the recorded proprietor (or the number of recorded proprietors who are not applicants) shall be left forming a separate estate.

Date

Collector.

**FORM 30.**

[See Section 34.]

**Notice to persons interested.**

THE OFFICE OF THE COMMISSIONER OF

To

WHEREAS it appears that sufficient reason exists why the partition of estate No. \_\_\_\_\_ borne on the revenue-roll of the \_\_\_\_\_ Collectorate should not be proceeded with, you are hereby required, under section 34 of Act V (B.C.) of 1897, to shew cause within \_\_\_\_\_ from the date of the service of this notice why the partition case should not be struck off the file.

Date

Commissioner.

**FORM 31.**

[See Section 47.]

**Notification of Commencement of Batwara.**

THE COLLECTORATE.

WHEREAS the Collector has made an order under section 29 declaring the estate to be under partition, it is now notified under section 47 of Act V (B.C.) of 1897 that it is intended to proceed with the partition. All the proprietors

of the estate are therefore required to produce before either jointly or separately, copies of their rent-rolls and statements of the rents collected during each of the three years next preceding and also copies of any measurement-papers of the estate which may be in their possession.

Date

Deputy Collector.

**FORM 32.**

[See Section 58.]

**Notice of date for consideration of the partition.**

THE COLLECTORATE.

To

Proprietors of mahal \_\_\_\_\_ pargana \_\_\_\_\_  
 zilla \_\_\_\_\_  
 zilla \_\_\_\_\_  
 zilla \_\_\_\_\_  
 The records of the batwara of mahal \_\_\_\_\_, pargana \_\_\_\_\_, having been received from the Deputy Collector for sanction under section 58, Act V (B.C.) of 1897, you are hereby informed that if you have any objection to the proposals made by the Deputy Collector in the batwara you will either personally or by an authorized agent file the objection on \_\_\_\_\_, and that in default of your doing so no objection will be heard after the expiry of the fixed time, and the partition proposed by the Deputy Collector will be sanctioned.

Collector.

**FORM 33.**

[See Section 59.]

**Notice to proprietors &c., to take extracts.**

THE COLLECTORATE.

To

Proprietors of mahal pargana  
zilla

AFTER preparing the papers of the batwara of mahal as directed by this office, the amil has submitted the paper; therefore under section 59 of Act V (B.C.) of 1897, you are hereby called upon to take out from my office the extract of the portion of the partition paper relating to your separate estate. Herein fail not.

Collector.

**FORM 34.**

[See Section 61.]

**Notice to the recorded proprietors.**

THE COLLECTORATE.

To

Proprietors of mahal pargana  
district

THE records of the batwara of mahal having been sanctioned in this office, you are, therefore, hereby informed under section 61 of Act V (B.C.) of 1897 that they will be at once submitted to the Commissioner, and you should file any representation or objection you may wish to prefer in respect of the partition made within 30 days from receipt of this notice.

Dated

19

Collector.

**FORM 35.**

[See Section 70.]

**Notice of Payment in Redemption of rent.**

To

THE

WHEREAS the dwelling-house of with has been included in the separate estate assigned to you from the parent estate, district, and the annual rent to be paid in perpetuity in respect of the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition, and the proprietor thereof has applied for permission to redeem the annual rent so fixed, and permission has been given him, and the said proprietor has paid Rs. , being the certified amount payable by him in redemption of the annual rent, you are hereby informed, under section 70 of Act V (B.C.) of 1897, that the sum will be paid to you or to your authorized agent on application, and that from the date on which possession may be given, the said proprietor, who has redeemed the rent of such land, will be entitled to hold such land, as a rent-free tenure secured against you and against any auction purchaser at a sale for arrears of revenue, including the Government, and that from such date the lands shall be so held as a rent-free tenure.



**FORM 36.**

[See Section 74.]

**Notice to Proprietors, &c., to attend.**

To

Proprietor of

WHEREAS it has been decided to draw lots in respect of your share which is to be separated from the parent estate, No. , district , you are hereby required, under section 74 of Act V (B.C.) of 1897, to attend at the office of Deputy Collector of in person or by authorized agent on 19 for the purpose of drawing lots

Dated

Deputy Collector.

**FORM 37.**

[See Section 90.]

**Notice of date for hearing cases.**

THE OFFICE OF THE COMMISSIONER OF

WHEREAS the partition proceedings of estate, No. , district , have been submitted to the undersigned for confirmation, and it is necessary to fix a day for hearing and disposing of the case, all parties concerned in the case abovementioned are required, under section 90 of Act V (B.C.) of 1897, to appear before the undersigned in person or by authorized agents at of 19 . Herein fail not.

Commissioner.

**FORM 38.**

[See Section 90.]

THE OFFICE OF THE COMMISSIONER OF

*List of Batwara cases pending for the consideration of the Commissioner under section 90 of Act V (B.C.) of 1897.*

Number of the estate on the taust.	Name of the estate.	District.	Names of the applicants for partition.	Names of non-applicants.	Date fixed for hearing and disposing of the case.	REMARKS.
1	2	3	4	5	6	7

Dated

Commissioner.

**FORM 39.**

[See Section 93.]

**Notice of confirmation of Partition.**

THE COLLECTORATE.

NOTICE is hereby given under section 93 of Act V (B.C.) of 1897 that the partition of the estate has been finally confirmed, as it was sanctioned (or as amended and altered) by the Commissioner.

*Dated**Collector.***FORM 40.**

[See Section 93 (2).]

**Notice when Amendments Involved, or fresh Extracts, &c., required.**

Notice to proprietor of mauza pargana zilla

2. As the partition of mahal as finally sanctioned involves certain amendments which may conveniently be made on the extracts of the partition paper and on the maps which have been prepared and delivered or offered by notice to you, you are hereby required under section 93 (2) of Act V (B.C.) of 1897, to produce such extracts and maps in order that such amendments may be noted on them.

3. As the alterations made in the partition, as finally sanctioned are such as make it desirable to prepare fresh extracts and maps, it is hereby declared, under section 93 of Act V (B.C.) of 1897, that the extract and map which were furnished or offered to you are cancelled, and you are required to take out of this office the fresh extracts and map which have been prepared.

*Dated*

19 .

*Collector.*

*N.B.—* Paragraph 2 or 3 is to be retained or omitted according to the circumstances of each case.

**FORM 41.**

[See Section 94.]

**Order to Amins.**

THE COLLECTORATE.

Parwana to amin appointed for the partition of mahal , pargana zilla

WHEREAS the partition of the mahal has been sanctioned by the Commissioner in his letter No. , dated 19 , therefore under section 94 of Act V (B.C.) of 1897, you are to proceed on 19 , to the mahal to give possession under the Commissioner's order, and are to submit the papers of giving possession immediately after and in default of carrying out the above order (i.e. of giving possession within the above time) you will be held responsible, and strict orders will be passed on you, because from each share is to be considered a separate and independent mahal.

Herein fail not.

*Dated*

19 .

*Collector.*

**FORM 42.**

[See Section 94.]

**Notice to each Recorded Proprietor.**

THE COLLECTORATE.

## NOTICE TO

proprietor of estate  
 You are hereby informed, under section 94 of Act V (B.C.) of 1897, that the  
 batwara of mauza has been sanctioned by the Commissioner of  
 , and possession has been accordingly given. This notice is  
 given to you that from the mahal assigned to you is to be deemed an  
 estate separate from the parent estate, and to be separately liable for the Govern-  
 ment revenue of that mahal, viz., Rs. a year, and you are  
 hereby called upon to attend the office of the undersigned within 15 days, and  
 enter into a separate engagement for the payment of the Government revenue  
 aforesaid.

*Dated*

19 .

*Collector.*

## APPENDIX B.

**Extracts from the Code of Civil Procedure (Act V of 1908)  
referred to in sections 52 and 97 of the Estates  
Partition Act (V of 1897).**

*Sections 30--32 of Act V of 1908.*

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party—

**Power to order  
discovery and  
the like.**

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

**Summonses to  
witness.**

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

**Penalty for  
default.**

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five hundred rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

## FIRST SCHEDULE OF ACT V OF 1908.

## Order XI.

*Discovery and Inspection.*

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness.

**Discovery by  
interrogatories.**

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

**Particular  
interrogatories  
to be submitted.**

3. In adjusting the cost of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court either with or without an application for inquiry that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

**Costs of interro-  
gatories.**

Form of interrogatories.

Corporations.

Objections to interrogatories by answer.

Setting aside and striking out interrogatories.

Affidavit in answer, filing.

Form of affidavit in answer.  
No exception to be taken.

Order to answer or answer further.

Application for discovery of documents.

Affidavit of documents.

Production of document.

Inspection of documents referred to in pleadings or affidavits.

Notice to produce.

Time for inspection when notice given.

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bond fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage or on any other ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *voir dire* examination, as the Court may direct.

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in form No. 5 in Appendix C, with such variations as circumstances may require.

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice, stating a time within three days from the delivery thereof at which the documents, or

such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Order for inspection.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing or what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19. (1) Where inspection of any business books is applied for the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

Verified copies.

(2) Whereon an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the applications is or are, or has or have at any time been, in his possession or power; and if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Premature discovery.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Non-compliance with order for discovery.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers and if it shall

Using answers to interrogatories at trial.

be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

*Order to apply to minors.*

23. This order shall apply to minor plaintiffs and defendants and to the next friends and guardians for the suit of persons under disability.

## ORDER XII.

### Admissions.

*Notice of admission of case.*

1. Any party to a suit may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

*Notice to admit documents.*

2. Either party may call upon the other party to admit any document saving all just exceptions: and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

*Form of notice.*

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

*Notice to admit facts.*

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice. Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

*Form of admissions.*

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

*Judgment on admissions.*

6. Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order, or give such judgment, as the Court may think just.

*Affidavit of signature.*

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

*Notice to produce documents.*

8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

*Costs.*

9. If a notice to admit or produce specified documents which are not necessary the costs occasioned thereby shall be borne by the party giving such notice.

## ORDER XIII.

### Production, impounding and return of documents.

*Documentary evidence to be produced at first hearing.*

1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(3) The Court shall receive the documents so produced: provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

Effect of non-production of documents.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rejection of irrelevant or inadmissible documents. Endorsements on documents admitted in evidence.

4. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted; and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. (1) Save in so far as is otherwise provided by the 'Bankers' Books Evidence Act, 1831, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

Endorsements on copies of admitted entries in books, accounts and records.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (a) where the record, book or account is produced on behalf of a party, then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected and the endorsement shall be signed or initialled by the Judge.

Endorsements on documents rejected as inadmissible in evidence.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

Recording of admitted and return of rejected documents.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Court may order any document to be impounded.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same:—

Return of admitted documents.

- (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and



- (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so :

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence a receipt shall be given by the person receiving it.

Court may send for papers from its own records or from other Courts.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other court the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to documents applied to material objects.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

. . . . .

## ORDER XVI.

### Summoning and Attendance of Witnesses.

Summons to attend to give evidence or produce documents

1. (1) At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witnesses to be paid into Court on applying for summons.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Experts.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses.

(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Tender of expense to witness.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid in.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account and in case of default in payment, may order such sum to be levied by attachment and sale of movable property of the party obtaining the summons ; or the Court may discharge the person summoned without requiring him to give evidence ; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such

deposit being made, may order, such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Time, place and purpose of attendance to be specified in summons.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Summons to produce documents

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Power to require persons present in Court to give evidence or produce document.

8. Every summons under this order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Summons how served.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Time for serving summons.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

Procedure where witness fails to comply with summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court;—

If witness appears, attachment may be withdrawn.

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. The Court may, where such person does not appear, or appears but fails to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all circumstances of the case, and may order his property or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Procedure if witness fails to appear.

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

Mode of attachment.	13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this order as if the person whose property is so attached were a judgment-debtor.
Court may of its own accord summon as witnesses strangers to suit.	14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed and may examine him as a witness or require him to produce such document.
Duty of persons summoned to give evidence or produce document.	15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.
When they may depart.	16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of. (2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.
Application of rules 10 to 13.	17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.
Procedure where witness apprehended cannot give evidence or produce document.	18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.
No witness to be ordered to attend in person unless resident within certain limits.	19. No one shall be ordered to attend in person to give evidence unless he resides :— (a) within the local limits of the Court's ordinary original jurisdiction, or (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two-hundred miles distance from the Court-house.
Consequence of refusal of party to give evidence when called on by Court. Rules as to witnesses to apply to parties summoned.	20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit. 21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

## THE SECOND SCHEDULE (ACT V OF 1908).

### Arbitration.

#### Arbitration in suits.

Parties to suit may apply for order or reference.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Appointment of arbitrator.

3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

Order of reference.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

4. (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators :—

Where reference is to two or more, order to provide for difference of opinion.

(a) by the appointment of an umpire ; or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail ; or

(c) by empowering the arbitrators to appoint an umpire ; or

(d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

5. (1) In any of the following cases, namely :—

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

Power of Court to appoint arbitrator in certain cases.

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves British India in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

Powers of arbitrator or umpire appointed under paragraph 4 or 5. Summoning witnesses and default.

7(1). The Court shall issue the same process to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period ; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Extension of time for making award.

Where umpire may arbitrate in lieu of arbitrators.

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

- (a) if they have allowed the appointed time to expire without making an award, or
- (b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Statement of special case by arbitrators or umpire:

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award.

12. The Court may, by order, modify or correct an award,—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) where the award contains clerical mistake or an error arising from an accidental slip or omission.

Order as to costs of arbitration.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted.

14. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;
- (b) where the award is so indefinite as to be incapable of execution;
- (c) where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

15(1). An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely:—

- (a) corruption or misconduct of the arbitrator or umpire;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

Judgment to be according to award.

16(1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

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